

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 391

STATE FARM FIRE AND CASUALTY  
COMPANY, ET AL., PETITIONERS,

vs.

KATHRYN TASHIRE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT

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1  
[fol. 1]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

Civil No. 65-30

**STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,**

**vs.**

**ELLIS D. CLARK, KENNETH GLASGOW, THERON NAUTA, ALICE  
ATTNEAVE, JAMES BRIGGS, GLADYS BUSHYHEAD, HENRY  
CAREY, MAXINE CAREY, MARY SHISEFSKI, LILLIAN G.  
FISHER, MILDRED FORRESTER, CLEO FOSTER, GAIL R.  
GREGG, GLADYS HART, GARY L. HENRY, HELEN C. HOHEN-  
SINNER, EDWARD HOLLENBECK, RICHARD E. A. JAMES,  
MARY ANN JONES, BARBARA MCGALLIAND, MARIA MARTIN,  
THOMAS MERRICK, ZOLA MOYDEN, MARY POOLEY, DORIS  
ROGERS, ALLAN SCHMIDT, BURL SIMINGTON, MAGGHELTSE  
SMIT, EVA SMITH, HARRY SMITH, JENNIFER SIBBIT,  
KATHERINE TASHIRE, RONALD N. TATE, LUCILLE WEST-  
OVER, RICHARD L. WALTON, JOHN DOE WILSON, DONALD  
WOOD, JOHNATHON ZIADY, GREYHOUND LINES, INC.,  
Defendants.**

**COMPLAINT—Filed January 22, 1965**

**Action in the Nature of Interpleader**

Comes now the plaintiff, pursuant to Title 28, Section 1335, U.S.C.A., and brings this action seeking interpleader and says:

1. Plaintiff, State Farm Fire and Casualty Company, is an insurance company organized and incorporated under the laws of the State of Illinois, and carrying on business in the State of Oregon, with its principal place of business [fol. 2] in the State of Illinois.

[File endorsement omitted]

2. The defendant Ellis D. Clark may be insured or have an interest in the insurance policy brought into question by this complaint.

3. The defendants Ellis D. Clark, Kenneth Glasgow, and Theron Nauta are residents and citizens of the State of Oregon.

4. The following persons are, or claim to be, injured as the result of the accident hereinafter described, and are each residents and citizens of the State of Oregon: Alice Attneave, Henry Carey, Theron Nauta, Burl Simington, and Katherine Tashire.

5. The following persons are, or claim to be, injured as the result of the accident hereinafter described, and are each residents and citizens of the State of California: James Briggs, Gladys Bushyhead, Mildred Forrester, Cleo Foster, Gladys Hart, Allan Schmidt, Jennifer Sibbit, Donald Wood, and Johnathon Ziady.

6. The following persons are, or claim to be, injured as the result of the accident hereinafter described, and are each residents and citizens of the State of Washington: Maxine Carey, Mary Chisefski, Helen C. Hohensinner, Edward Hollenbeck, Mary Ann Jones, Maria Martin, Mary Pooley, and Doris Rogers.

7. The following persons are, or claim to be, injured as the result of the accident hereinafter described, and are residents and citizens of the states indicated after their names: Gary L. Henry, South Dakota; and Zola Moyden, Montana.

8. The following persons are, or claim to be, injured as the result of the accident hereinafter described, and are residents and citizens of the Provinces of Canada indicated after their names: Lillian G. Fisher, British Columbia; Gail R. Gregg, Alberta; Richard E. A. James, British [fol. 3] Columbia; Barbara McGalliard, British Columbia; Thomas Merrick, British Columbia; Maggcheltse Smit,

Alberta; Eva Smith, British Columbia; Harry Smith, British Columbia; Ronald N. Tate, British Columbia; and Lucille Westover, Alberta.

9. The defendant Richard L. Walton, a citizen and resident of the State of Washington, is, or may be, beneficially interested by reason of the death occurring to his wife, Sue M. Walton, Deceased, which may have resulted from the accident hereinafter described.

10. The defendant John Doe Wilson, a citizen and resident of British Columbia, Canada, is, or may be, beneficially interested by reason of the death occurring to Jean Wilson, Deceased, which may have resulted from the accident hereinafter described.

11. The defendant Greyhound Lines, Inc., is a California corporation doing business in the State of Oregon and may be interested in the fund which may be established by this action in the nature of interpleader.

12. Primary jurisdiction is claimed under Title 28, Section 1335, U.S.C.A., although jurisdiction is also present by reason of diversity of citizenship and amount in controversy.

13. State Farm Fire and Casualty Company, on September 19, 1964, had in full force and effect its policy No. 9004 625-A10-37B providing for payment of damages which the insured should become legally obligated to pay because of bodily injury sustained by other persons arising out of the use of an automobile, with limits for bodily injury liability of Ten Thousand Dollars (\$10,000.00) for each person and Twenty Thousand Dollars (\$20,000.00) for each occurrence.

14. A specimen copy of said policy is attached hereto, made a part hereof, and marked "Exhibit 1".

15. By the terms and conditions of said policy the insurance provided therein does not apply to a non-owned [fol. 4] automobile while used in any other business or

occupation, except a private passenger automobile operated or occupied by the named insured or spouse.

16. On or about the 19th day of September, 1964, the defendant Ellis D. Clark, who was at that time named on the aforesaid policy, was operating a 1964 Dodge one-half ton pickup owned by the defendant Kenneth Glasgow which was being used at said time in the business of the defendant Kenneth Glasgow.

17. On said date an accident occurred while the defendant Clark was operating said vehicle on Interstate Highway 5, a public thoroughfare, at a point five-tenths of a mile north of the O'Brien Resort, north of the City of Redding, in Shasta County, State of California.

18. The vehicle being operated by the defendant Clark struck the left front corner of a bus belonging to the defendant Greyhound Lines, Inc., being operated by the defendant Theron Nauta, and possibly causing the injuries and deaths referred to above to the defendants listed in Paragraphs 4 through 10 herein who were passengers on said bus.

19. At least four (4) lawsuits have been filed in the Courts of the State of California against the defendant Ellis D. Clark and others, the total of the prayers of said lawsuits exceeding One Million One Hundred Ten Thousand Dollars (\$1,110,000). Numerous claims for damages also have been made against the defendant Clark and additional lawsuits are threatened. No suit has yet proceeded to trial.

20. The policy of insurance (Exhibit 4) of the plaintiff, provides that it has the duty with respect to such insurance as is afforded by its policy to defend any such suits brought against the insured.

21. Said policy provides that plaintiff has the right to [fol. 5] investigate, negotiate and settle claims or suits against the insureds.



22. If legal liability for all or substantially all of said injuries and deaths is established as against an insured of the plaintiff, the amount of such liability will substantially exceed the policy limits.

23. The plaintiff has no authority to admit liability for or on behalf of the defendant Clark.

24. The plaintiff does not believe that it is required to either defend or pay on behalf of the defendant Clark as the operation of the vehicle involved in the accident was excluded by the coverage of the policy by the terms referred to in Paragraph 15 herein.

25. The plaintiff has deposited with the Clerk of this Court the sum of Twenty Thousand Dollars (\$20,000.00) for the benefit of the defendants herein, which fund is conditioned upon a finding of the Court contrary to the position of the plaintiff that plaintiff's coverage does not extend to the defendant Clark under these circumstances and further is conditioned upon an appropriate order of interpleader being issued by this Court.

26. In the event that the Court should determine that the plaintiff's policy of insurance extends coverage to the defendant Clark under these circumstances, the plaintiff, to the extent needed to satisfy the claims of the injured defendants as against the defendant Clark, will relinquish all claim to the fund deposited with the Clerk.

Wherefore, plaintiff prays:

1. That the Court adjudicate and decree that plaintiff is not required to extend coverage to the defendant Clark under its policy of insurance herein and order the return of the fund deposited.

[fol. 6] 2. In the event the Court should determine adversely to the plaintiff, in that event the court enter an order of interpleader determining that the appropriate defendants are adverse claimants to the benefits of the fund made available by this proceeding.

6.

3. That the Court order such defendants who claim injury or damage to interplead and establish their respective claims.

4. That the Court adjudicate and decree that the plaintiff by the deposit of said sum with the Clerk to secure to the extent of its coverage the payment of damages suffered by the injured or damaged defendants has thereby discharged all its obligations growing out of bodily injury liability coverage of said policy, including the obligation to defend any lawsuit pending or henceforth filed against the defendant Clark growing out of this occurrence.

5. That the Court issue an injunction restraining all parties from further prosecuting any pending suits against plaintiff or the defendant Clark, or from instituting like proceedings before this or any other Court, whether Federal or State.

Williams, Skopil & Miller, By Al J. Laue, Of Attorneys for Plaintiff.

Williams, Skopil & Miller, 4th Floor, Pioneer Trust Building, Salem, Oregon, 364-4443.



# STATE FARM FIRE AND CASUALTY automobile policy

authorized representative

issuing office

Northwest Office  
4800 25th Avenue, N.E.  
Salem, Oregon  
97303

STATE FARM FIRE AND CASUALTY COMPANY / HOME OFFICE  
BLOOMINGTON, ILLINOIS

## DECLARATIONS

THE PREMIUM SHOWN IS FOR THE POLICY PERIOD AND COVERAGES INDICATED HEREON

POLICY NUMBER 9004 625-A10-37B  
NAMED INSURED CLARK, ELLIS D &  
BARBARA J  
1280 OJAI LN  
GRANTS PASS ORE  
POLICY PERIOD (Month-Day-Year) 06-10-64 TO 01-10-65  
THE COVERAGE IN FORCE IS INDICATED BY X OR  
DEDUCTIBLE AMOUNT UNDER PART I, PART II,  
AND PART III BELOW.  
AGENT DORIO 1211

## EXCEPTIONS AND ENDORSEMENTS

CAR 1 6040.2 FINANCED-VALLEY FINANCE CO, PO BOX 126,  
GRANTS PASS ORE.  
SES 6027 END.

9004 625-A10-37A REPLACED.

COVERAGE		PART I	PART II	PART III	DESCRIPTION OF AUTOMOBILE	PREMIUM
CAR 1	X	\$100			CHEV 56 LDR VB56L016189	\$ 63.05
CAR 2	X	\$100			CHEV 59 ST VB59L102563	\$ 53.22
CAR 3						
CAR 4						

LIMITS OF LIABILITY IF AMENDED In Thousands of Dollars	
A EACH PERSON	BODILY INJURY LIABILITY
AND	
B EACH ACCIDENT	
C EACH ACCIDENT	PROPERTY DAMAGE LIABILITY
D EACH PERSON	MEDICAL PAYMENT

## EXPLANATION OF COVERAGE PARTS

PART I—Liability, Medical Payments, and Uninsured  
Automobile Coverage

PART II—Loss to Owned Automobile,  
(Deductible Comprehensive and Collision),  
and \$5 Deductible Road Service.

Entry under Part II is the deductible amount  
for Coverage I.

PART III—Comprehensive and \$5 Deductible Road  
Service.

Entry under Part III is the deductible  
amount for Coverage I.

1. The policy period shall be as shown under "Policy Period" and for such succeeding periods of six months each thereafter as the required renewal premium is paid by the insured on or before the expiration of the current policy period. The "Policy Period" shall begin and end at 12:01 A.M., standard time at the address of the named insured as stated herein. The premium shown is for the policy period and coverages indicated above.

2. The owned automobile will be principally garaged in the declared town and state.

3. Unless stated in the exceptions (a) no insurer has canceled automobile insurance issued to the named insured or any member of his household within the past three years, and (b) no license to drive or registration has been suspended, revoked or refused for the named insured or any member of his household within the past three years.

4. The named insured is the sole owner of the described automobile except as stated in the exceptions.

5. If a mortgage owner, conditional vendor, or assignee is named in the exceptions, loss, if any, under Parts II and III shall be payable to the named insured and to such additional interest as such interest may appear, and this insurance as to such additional interest shall not be invalidated by any act or negligence of the mortgagor or owner, nor by any change in the title or ownership, nor by any error or inadvertence in the description of the automobile until after notice of termination of the policy shall be given to such mortgage owner, conditional vendor, mortgagee or assignee stating when not less than ten days thereafter such termination shall be effective; provided, the lien-holder shall notify the company within ten days of any change of interest or ownership which shall come to the knowledge of said lien-holder and failure to do so will render this policy null and void.

6. The purposes for which the owned automobile is to be used are "pleasure and business" unless otherwise stated in the exceptions. (a) The term "pleasure and business" is defined as personal, pleasure, family and business use. (b) The term "commercial" or "commercial-farm" is defined as use principally in the business occupation of the named insured as stated in the exceptions, including occasional use for personal, pleasure, family and other business purposes.

Countersigned \_\_\_\_\_ 19 \_\_\_\_\_ at \_\_\_\_\_

by \_\_\_\_\_  
Authorized Representative



ART I—LIABILITY AND MEDICAL PAYMENT.

COVERAGES A and B—(A) Bodily Injury Liability and (B) Property Damage Liability.

(1) To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of (A) bodily injury sustained by other persons, and (B) property damage, caused by accident arising out of the ownership, maintenance or use, including loading or unloading, of the owned automobile; and to defend any suit against the insured alleging such bodily injury or property damage and seeking damages which are payable hereunder even if any of the allegations of the suit are groundless, false or fraudulent; but the company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient.

Limits of Liability—Coverages A and B. Unless specifically amended in the declarations, the company's limit of liability shall not exceed under:

coverage A, \$10,000 for all damages arising out of bodily injury sustained by one person in any one accident and subject to this provision \$20,000 for all such damages for bodily injury sustained by two or more persons in any one accident; coverage B, \$5,000 for all damages to all property of one or more persons or organizations in any one accident.

The inclusion herein of more than one insured shall not increase the limits of liability.

(2) As respects the insurance afforded under coverages A and B and in addition to the applicable limits of liability to pay:

- costs taxed against the insured in any such suit and, after entry of judgment, all interest accruing on the entire amount thereof until the company has paid or tendered such part of such judgment as does not exceed the limit of the company's liability thereon;
- premiums on bonds to release attachments not in excess of the applicable limit of liability and premiums on required appeal bonds, but without any obligation to apply for or furnish any such bonds;
- expense incurred by the insured for immediate medical and surgical relief to others as shall be imperative at the time of accident;
- reasonable expense, except loss of earnings, incurred by the insured at the company's request.

(3) Financial Responsibility Laws. When certified as proof of future financial responsibility under any motor vehicle financial responsibility law and while such proof is required during the policy period, this policy shall comply with such law if applicable, to the extent of the coverage and limits required thereby; but not in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

COVERAGE C—Medical Payments. To pay reasonable medical expenses incurred within one year from the date of accident:

Division 1. To or for the first person named in the declarations and, while residents of his household, his spouse and the relatives of either who sustain bodily injury, caused by accident, while occupying or through being struck by the owned automobile, or any other land motor vehicle or trailer not operated on rails or crawler-treads, but not (1) a farm type tractor or equipment designed for use principally off public roads, except while actually upon public roads or (2) a land motor vehicle or trailer while located for use as premises and not as a vehicle or (3) a house trailer while used as permanent living quarters;

Division 2. To or for any other person who sustains bodily injury, caused by accident, while occupying the owned automobile, provided such automobile is being used by the named insured or his spouse, if a resident of the same household, or with the permission of either;

DEFINITIONS—PART I

Insured—under coverages A and B, the unqualified word "insured" includes (1) the named insured, and if the named insured is an individual, his spouse if a resident of the same household, (2) any other person while using the owned automobile, provided the operation and the actual use of such automobile are with the permission of the named insured or such spouse, and are within the scope of such permission; and (3) any person or organization legally responsible for the use thereof by an insured as defined under the two subsections above.

Under coverage U the unqualified word "insured" includes (1) the named insured, if an individual or husband and wife, his spouse if a resident of the same household, and the relatives of either; (2) any other person while occupying an insured automobile; and (3) any person, with respect to damages he is entitled to recover for care or loss of services because of bodily injury to which this coverage applies.

Relative—means a relative of the named insured or of his spouse, who is a resident of the same household, provided neither such relative nor his spouse owns a private passenger automobile.

Owned Automobile—means the motor vehicle or trailer described in the declarations, and includes a temporary substitute automobile, a newly acquired automobile, and, provided the described automobile is not classified as "commercial", under coverages A, B and C, a trailer owned by the named insured or his spouse, if a resident of the same household.

Automobile—means a four wheel land motor vehicle designed for use principally upon public roads, but "automobile" shall not include a midget automobile, nor any vehicle while located for use as a residence or premises.

Non-Owned Automobile—means an automobile or trailer not owned by or furnished or available for the frequent or regular use of either the named insured or any resident of the same household, other than a temporary substitute automobile.

Private Passenger Automobile—means a private passenger or station wagon type automobile.

Utility Automobile—means an automobile of the pick-up body, sedan delivery or panel truck type with a load capacity of 1500 pounds or less.

Newly Acquired Automobile—means an automobile, ownership of which is acquired by the named insured or his spouse if a resident of the same household if (1) it replaces an automobile owned by either and covered by this policy, or the company insures all automobiles owned by the named insured and such spouse on the date of its delivery, and (2) the named insured or such spouse notifies the company within 30 days following such delivery date of his election to make this and no other policy issued by the company applicable to such automobile. The named insured shall pay any additional premium required because of the application of the insurance to such newly acquired automobile.

Temporary Substitute Automobile—means an automobile not owned by the named insured or any resident of the same household, while temporarily used as a substitute for the owned automobile when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction.

Midget Automobile—means a land motor vehicle of the type commonly referred to as "midget automobile", "kart", "go-kart", "speedmobile" or by a comparable name, whether commercially built or otherwise.

Insured Automobile—under coverage U means:

- an owned automobile, provided the use then, as by such named insured or spouse or any other person to whom such named insured or spouse has given permission to use such automobile, if the use is within the scope of such permission, or

provided that no such payment shall be made unless the person to or for whom such payment is made shall have executed a written agreement that the amount of such payment shall be applied toward the settlement of any claim, or the satisfaction of any judgment for damages entered in his favor, against any insured because of bodily injury arising out of any accident to which coverage A applies.

Limit of Liability—Coverage C. Unless specifically amended in the declarations, the company's limit of liability shall not exceed \$1,000 for all expenses incurred for each person who sustains bodily injury in any one accident.

USE OF NON-OWNED AUTOMOBILES. If the named insured is an individual or husband and wife, and if during the policy period such named insured, or the spouse of such individual if a resident of the same household, owns an automobile covered by this policy and classified as "pleasure and business" such insurance as is afforded by this policy under:

(1) coverages A and B applies to the use of a non-owned automobile by (a) such named insured or spouse, and (b) any other person or organization legally responsible for the use by such named insured or spouse of an automobile not owned or hired by such other person or organization;

(2) division 2 of coverage C applies to the use of a non-owned automobile by such named insured or spouse, provided the bodily injury results from its operation or occupancy by such named insured or spouse;

provided such use is with the permission of the owner or person in lawful possession of such automobile.

COVERAGE U—Uninsured Automobile Coverage—Damages for Bodily Injury Caused by Uninsured Automobiles. To pay all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured automobile because of bodily injury sustained by the insured, caused by accident and arising out of the ownership, maintenance or use of such uninsured automobile; provided, for the purposes of this coverage, determination as to whether the insured or such representative is legally entitled to recover such damages, and if so the amount thereof, shall be made by agreement between the insured or such representative and the company or, if they fail to agree, by arbitration.

Limits of Liability—Coverage U. The company's limit of liability shall not exceed: \$5,000 for all damages, including damages for care and loss of services arising out of bodily injury sustained by one person in any one accident and subject to this provision \$10,000 for all such damages for bodily injury sustained by two or more persons in any one accident provided that any amount payable as damages because of bodily injury sustained in an accident by a person who is an insured under this coverage shall be reduced by:

(1) all sums paid on account of such bodily injury by or on behalf of the owner or operator of the uninsured automobile and any other person or organization jointly or severally liable together with such owner or operator for such bodily injury;

(2) all sums paid on account of such bodily injury under coverage A of this policy;

(3) all sums paid on account of such bodily injury under coverage C of this policy;

(4) the amount paid and the present value of all amounts payable under any workmen's compensation law, disability benefits law or any similar law.

Any payment made to an insured under this coverage shall be applied in reduction of any amount which he may be entitled to recover from any person who is an insured under coverage A of this policy.

but the term "insured automobile" shall not include a trailer of any type or any automobile while being used as a public or livery conveyance.

Uninsured Automobile—under coverage U means:

(1) a land motor vehicle with respect to the ownership, maintenance or use of which there is no bodily injury liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such vehicle; or

(2) a hit-and-run automobile as defined;

but the term "uninsured automobile" shall not include:

(i) an automobile defined herein as an "insured automobile";

(ii) a land motor vehicle owned by the named insured or by any resident of the same household;

(iii) a land motor vehicle which is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

(iv) a land motor vehicle which is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any of the foregoing;

(v) a land motor vehicle designed for use principally off public roads, except while being used on public roads;

(vi) a land motor vehicle while located for use as a residence or premises.

Hit-and-Run Automobile—under coverage U means a land motor vehicle which causes bodily injury to an insured arising out of physical contact of such vehicle with the insured or with an automobile which the insured is occupying at the time of the accident, provided: (1) there cannot be ascertained the identity of either the operator or owner of such "hit-and-run automobile"; (2) the insured or someone on his behalf shall have reported the accident within 24 hours to a police or judicial officer or to the Commissioner of Motor Vehicles, and shall have filed with the company within 30 days thereafter a statement under oath that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and (3) at the company's request, the insured or his legal representative makes available for inspection the automobile which the insured was occupying at the time of the accident.

Trailer—means a trailer not so described if designed for use with a private passenger automobile and if not (1) a passenger trailer, (2) a trailer used for business purposes with another type automobile, or (3) a trailer used as premises for office, store or display purposes. This insurance does not apply, under coverage C, to a house trailer while used as permanent living quarters. The word "trailer" includes semitrailer.

Occupying—means in or upon or entering into or alighting from.

Automobile Business—means the business or occupation of selling, leasing, repairing, servicing, storing or parking of automobiles.

Bodily Injury—means bodily injury, sickness or disease including death at any time resulting therefrom.

Property Damage—means injury to or destruction of property of others, including loss of use thereof.

Damages—wherever used with respect to coverage A includes damages for care and loss of services.

Medical Expenses—means expenses for necessary medical, surgical, X-ray, dental, ambulance, hospital, professional nursing and funeral services, eyeglasses, hearing aids and prosthetic devices.

Person—means a natural person and not a corporation, partnership, association or



is rented or leased to others by the insured, used as a public or livery conveyance, or used for carrying persons for a charge, but the transportation on a share expense basis in a private passenger automobile of friends, neighbors, fellow employees or school children shall not be deemed carrying persons for a charge;

(b) coverages A, B and division 2 of coverage C to a non-owned automobile

(1) while maintained or used by any person while such person is employed or otherwise engaged in an automobile business of the insured or of any other person or organization, or  
(2) while used in any other business or occupation, except a private passenger automobile operated or occupied by such named insured or spouse;

(c) coverages A, B and C (except under division 1 of coverage C) while the owned automobile is used for the towing of any trailer owned or hired by the insured and not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile owned or hired by the insured and not covered by like insurance in the company;

(d) coverages A and B, (1) to liability assumed by the insured under any contract or agreement; or (2) to any obligation for which the United States may be held liable under the Federal Tort Claims Act;

(e) coverages A and B, except as to the named insured and his spouse, if a resident of the same household, to the owned automobile while used by any person while such person is employed or otherwise engaged in an automobile business, except that coverages A and B shall apply, as excess insurance over any other collectible insurance, to a resident of the same household as the named insured, to a partnership in which such resident or the named insured is a partner, or to any partner, agent or employee of the named insured, such resident or partnership;

(f) coverages A and B, to bodily injury or property damage with respect to which an insured under this policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;

(g) coverage A, except as to the named insured and his spouse, if a resident of the same household, to any employee with respect to bodily injury of another employee of the same employer injured in the course of such employment arising out of the maintenance or use of an automobile in the business of such employer;

(h) coverage A, (1) to bodily injury to any employee of the insured arising out of

## PART II—LOSS TO OWNED

**COVERAGE L—Loss to Owned Automobile—Deductible.** To pay for loss to the owned automobile but only for the amount of each such loss in excess of the deductible amount stated in the declarations as applicable hereto. The deductible amount shall not apply if such loss is caused by fire or a theft of the entire automobile.

**Supplementary Payments.** If coverage L is afforded by this policy the company further agrees:

(1) In addition to the limit of liability (a) following a theft of the entire automobile to reimburse the named insured for transportation expense, not exceeding \$8 per day, incurred during the period starting 72 hours after the report of theft to the company and ending when the company offers settlement for the theft, and (b) to pay general average and salvage charges for which the insured becomes legally liable, because of the owned automobile being transported.

(2) To pay the reasonable expense incurred in connection with the owned automobile because of:

(a) delivery of gasoline, oil, loaned battery, or change of tire, but not the cost of such items;

## PART III—COMPREHENSIVE-DEDUCTIBLE

**COVERAGE K—Comprehensive-Deductible.** To pay for loss to the owned automobile except loss caused by collision, but only for the amount of each such loss in excess of the deductible amount stated in the declarations as applicable hereto. Breakage of glass, or loss caused by missiles, falling objects, fire, theft, larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion or colliding with birds or game animals shall not be deemed to be loss caused by collision. The deductible amount shall not apply to loss caused by fire or a theft of the entire automobile.

**Supplementary Payments.** If coverage K is afforded by this policy the company further agrees:

(1) In addition to the limit of liability (a) following a theft of the entire automobile to reimburse the named insured for transportation expense, not exceeding \$8 per day, incurred during the period starting 72 hours after the report of theft to the company and ending when the company offers settlement for the theft, and (b) to pay general average and salvage charges for which the insured becomes legally liable, because of the owned automobile being transported.

(2) To pay the reasonable expense incurred in connection with the owned automobile because of:

## DEFINITIONS—PARTS II AND III

The definitions of "Owned Automobile, Automobile, Newly Acquired Automobile, Temporary Substitute Automobile, Midget Automobile, and War" under Part I apply to Parts II and III.

*This insurance does not apply under Parts II and III:*

(a) while the owned automobile is rented or leased to others by the insured, used as a public or livery conveyance, or used for carrying persons for a charge, but the transportation on a share expense basis in a private passenger automobile of friends, neighbors, fellow employees or school children shall not be deemed carrying persons for a charge;

(b) to loss due to war;

(c) to loss due to taking by any governmental authority;

(d) to loss due to radioactive contamination;

## CONDITIONS

**(The Conditions Apply to All of the Parts and Coverages Unless Otherwise Noted)**

1. **Notice.** In the event of an accident or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, and the names and addresses of injured persons and available witnesses, shall be given by or on

compensation law, or (ii) other employment obligation for which the insured or his insurer may be held liable under workers' compensation, unemployment compensation or disability benefits law, or under any similar law;

(i) coverage A, to bodily injury to the insured or any member of the family of the insured residing in the same household as the insured;

(1) coverage B, to injury to or destruction of property owned or transported by the insured, or property rented to or in charge of the insured other than a residence or private garage injured or destroyed by a private passenger automobile covered by this policy;

(k) coverage C, to bodily injury to any person:

(1) if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;

(2) while occupying or through being struck by any automobile, land motor vehicle or trailer if such vehicle is owned by the named insured or any resident of the same household and is not included in the definition of "owned automobile";

(3) other than the named insured and, while residents of his household, his spouse or the relatives of either, while occupying any vehicle not defined herein as an "owned automobile" or a "non-owned automobile";

(1) coverage C to the extent that any medical expense is paid or payable to or on behalf of the injured person under the provisions of any

(1) automobile or premises insurance affording benefits for medical expenses, (2) individual, blanket or group accident, disability or hospitalization insurance, or

(3) medical or surgical reimbursement plan;

(m) coverage C and with respect to expenses under coverage A(2) (c), to bodily injury or loss due to war;

(n) coverage U to bodily injury to an insured, or care or loss of services recoverable by an insured, with respect to which such insured, his legal representative or any person entitled to payment under this coverage shall, without written consent of the company, make any settlement with or prosecute to judgment any action against any person or organization who may be legally liable therefor;

(o) coverage U so as to insure directly or indirectly to the benefit of any workmen's compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workmen's compensation or disability benefits law or any similar law.

## AUTOMOBILE—DEDUCTIBLE

(b) mechanical first aid not to exceed one hour at the place of disablement;

(c) towing to the nearest garage or service station where the necessary repairs can be made if the automobile will not operate under its own power;

but only for the amount of such expense arising out of each disablement in excess of \$5.

**Limits of Liability—Settlement Options—Coverage L.** The limit of the company's liability for loss shall not exceed the actual cash value of the property, or if the loss is of a part thereof, the actual cash value of such part, at time of loss, nor what it would then cost to repair or replace such property with other of like kind and quality, less depreciation and deductible amount applicable.

The company may at its option pay for the loss in money or may repair or replace the property or such part thereof as aforesaid, or may return any stolen property with payment for any resultant damage thereto at any time before the loss is paid or the property is so replaced, or may take all or such part of the property at the agreed value but there shall be no abandonment to the company. The company may, at its option, settle any claim for loss either with the named insured or the owner of the property.

## PART III—COMPREHENSIVE-DEDUCTIBLE

(a) delivery of gasoline, oil, loaned battery, or change of tire, but not the cost of such items;

(b) mechanical first aid not to exceed one hour at the place of disablement;

(c) towing to the nearest garage or service station where the necessary repairs can be made if the automobile will not operate under its own power;

but only for the amount of such expense arising out of each disablement in excess of \$5.

**Limits of Liability—Settlement Options—Coverage K.** The limit of the company's liability for loss shall not exceed the actual cash value of the property, or if the loss is of a part thereof, the actual cash value of such part, at time of loss, nor what it would then cost to repair or replace such property with other of like kind and quality, less depreciation and deductible amount applicable.

The company may at its option pay for the loss in money or may repair or replace the property or such part thereof as aforesaid, or may return any stolen property with payment for any resultant damage thereto at any time before the loss is paid or the property is so replaced, or may take all or such part of the property at the agreed value but there shall be no abandonment to the company. The company may, at its option, settle any claim for loss either with the named insured or the owner of the property.

## DEFINITIONS—PARTS II AND III

**Loss**—means each direct and accidental loss of or damage to an automobile covered by this policy including its equipment.

**Collision**—means collision of an automobile covered by this policy with another object or with a vehicle to which it is attached or upset of such automobile.

## EXCLUSIONS—PARTS II AND III

(e) while the owned automobile is subject to any bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance, not declared in this policy;

(f) to any loss to the owned automobile which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such loss is the direct result of a theft covered by this policy, of the entire automobile;

(g) to tires unless stolen, damaged by fire, malicious mischief or vandalism, or unless such loss be coincident with other loss covered by this policy;

(h) to loss due to conversion, embezzlement or secretion by any person in possession of the owned automobile under a bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance.

behalf of the insured to the company or any of its authorized agents as soon as practicable. If claim is made or suit is brought against the insured, he shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.



In the event of theft prompt notice shall also be given to the police.  
If, before the company makes payment of loss under coverage U, the insured or his legal representative shall institute any legal action for bodily injury against any person or organization legally responsible for the use of an automobile involved in the accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to the company by the insured or his legal representative.

2. Action Against Company. No action shall lie against the company:

- (a) Unless as a condition precedent thereto there shall have been full compliance with all terms of this policy.
- (b) Under coverages A and B, until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization, or the legal representative thereof, having secured such judgment or agreement, shall be entitled to recover under this policy to the extent of the insurance afforded. Nothing contained in this policy shall give any person or organization any right to join the company as a co-defendant in any action against the insured to determine the insured's liability.

Bankruptcy or insolvency of the insured or his estate shall not relieve the company of its obligations.

- (c) Under coverages C, K, L and U, until 30 days after the required notice of accident or loss has been filed with the company.

3. Assistance and Cooperation of the Insured. The insured shall cooperate with the company and upon its request, attend hearings and trials, assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of any legal proceedings in connection with the subject matter of this insurance. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

4. Subrogation. Upon payment under this policy, except under coverage C, the company shall be subrogated to all the insured's rights of recovery therefor and the insured shall do whatever is necessary to secure such rights and do nothing to prejudice them.

Upon payment under coverage C of this policy the company shall be subrogated to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery which the injured person or anyone receiving such payment may have against any person or organization and such person shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. Such person shall do nothing after loss to prejudice such rights.

5. Trust Agreement. In the event of payment to any person under coverage U:

(a) the company shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury because of which such payment is made;

(b) such person shall hold in trust for the benefit of the company all rights of recovery which he shall have against such other person or organization because of the damages which are the subject of claim made under this coverage;

(c) such person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;

(d) if requested in writing by the company, such person shall take, through any representative designated by the company, such action as may be necessary or appropriate to recover such payment as damages from such other person or organization, such action to be taken in the name of such person; in the event of a recovery, the company shall be reimbursed out of such recovery for expenses, costs and attorneys' fees incurred by it in connection therewith;

(e) such person shall execute and deliver to the company such instruments and papers as may be appropriate to secure the rights and obligations of such person and the company established by this provision.

6. Medical Reports; Proof and Payment of Claim. As soon as practicable the person making claim under coverages C or U shall give to the company written proof of claim, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable. Proof of claim shall be made upon forms furnished by the company unless the company shall have failed to furnish such forms within 15 days after receiving notice of claim. The injured person shall submit to physical examinations by physicians selected by the company when and as often as the company may reasonably require and he, or in the event of his incapacity or death his legal representative, shall upon each request from the company execute authorization to enable the company to obtain medical reports and copies of records.

Under coverage U the insured and every other person making claim shall submit to examination under oath by any person named by the company and subscribe the same, as often as may reasonably be required.

Under coverage C the company may pay the injured person or any person or organization tendering the services and such payment shall reduce the amount payable hereunder. Any payment shall not constitute admission of liability of the insured or except hereunder, of the company.

Any amount due under coverage U is payable (a) to the insured, or (b) if the insured be a minor to his parent or guardian, or (c) if the insured be deceased to his surviving spouse, otherwise (d) to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents; provided, the company may at its option pay any amount due hereunder in accordance with division (d) hereof.

7. Named Insured's Duties When Loss Occurs—Parts II and III. When loss occurs, the named insured also shall:

(a) use every reasonable means to protect the damaged property covered by this policy from any further loss; reasonable expense incurred in affording such protection shall be deemed incurred at the company's request;

(b) upon the company's request exhibit the damaged property to the company and submit to examinations under-oath by anyone designated by the company, subscribe the same, procure and produce for the company's examination all pertinent records, receipts and invoices, or certified copies, if originals be lost, permitting copies thereof to be made, all at such reasonable times and places as the company shall designate.

In Witness Whereof, the State Farm Fire and Casualty Company has caused this policy to be signed by its President and Secretary, at Bloomington, Illinois, and countersigned on the declarations page by a duly authorized representative of the company.

8. No Benefit to Bailee—Parts II and III. The insurance hereunder, shall not insure directly or indirectly to the benefit of any carrier or other bailee for hire liable for loss to an automobile insured under this policy.

9. Other Insurance. With respect to any liability or loss to which this and any other automobile insurance policy issued to the named insured by the company also applies, the total limit of the company's liability under all such policies shall not exceed the highest applicable limit of liability under any one such policy.

Subject to the above paragraph, if the insured has other insurance against liability or loss covered by this policy, the company under coverages A, B, K and L, shall not be liable for a greater proportion of such liability or loss than the applicable limit of liability bears to the total applicable limit of liability of all collectible insurance against such liability or loss provided:

(a) The insurance with respect to a newly acquired automobile shall not apply to any liability or loss against which the insured has other collectible insurance applicable thereto in whole or in part.

(b) The insurance with respect to a temporary substitute automobile, a trailer and a non-owned automobile shall be excess over other collectible insurance.

Under coverage U with respect to bodily injury to an insured while occupying an automobile not owned by a named insured under this coverage, the insurance hereunder shall apply only as excess insurance over any other similar insurance available to such occupant, and this insurance shall then apply only in the amount by which the applicable limit of liability of this coverage exceeds the sum of the applicable limits of liability of all such other insurance.

Subject to the foregoing paragraph, under coverage U if the insured has other similar insurance available to him against a loss covered by this coverage, then the damages shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and the company shall not be liable under this coverage for a greater proportion of the applicable limit of liability of this coverage than such limit bears to the sum of the applicable limits of liability of this insurance and such other insurance.

10. Arbitration. If any person making claim under coverage U and the company do not agree that such person is legally entitled to recover damages from the owner or operator of an uninsured automobile because of bodily injury to the insured, or do not agree as to the amount payable hereunder, then each party shall, upon written demand of either, select a competent and disinterested arbitrator. The two arbitrators so named shall select a third arbitrator, or if unable to agree thereon within 30 days, then upon request of the insured or the company such third arbitrator shall be selected by a judge of a court of record in the county and state in which such arbitration is pending. The arbitrators shall then hear and determine the question or questions so in dispute, and the decision in writing of any two arbitrators shall be binding upon the insured and the company, each of whom shall pay his or its chosen arbitrator and shall bear equally the expense of the third arbitrator and all other expenses of the arbitration. Unless the parties otherwise agree, the arbitration shall be conducted in the county and state in which the insured resides and in accordance with the usual rules governing procedure and admission of evidence in courts of law.

11. Joint and Several Interests. If two or more insureds are named in the declarations, this policy shall apply to them jointly and severally but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

12. Two or More Automobiles. When two or more automobiles are insured hereunder, the policy shall apply separately to each as a motor vehicle and a trailer or trailers attached thereto shall be one automobile as respects the limits of liability under coverages A, B and C.

13. Changes. The terms of this policy may not be waived or changed except by policy endorsement attached hereto, signed by an executive officer of the company.

14. Assignment. No interest in this policy is assignable unless the company's consent is endorsed hereon. If the insured named in the declarations dies, this policy shall cover (a) his surviving spouse as named insured, (b) any person having proper temporary custody of the owned automobile until the appointment and qualification of a legal representative, and (c) thereafter his legal representative as named insured but only while acting within the scope of his duties as such.

15. Cancellation. The named insured may cancel this policy by mailing to the company written notice stating when thereafter such cancellation shall be effective.

The company may cancel this policy by written notice, addressed to the insured named in the declarations and mailed to the address shown therein, stating when not less than ten days thereafter cancellation shall be effective. Such notice of cancellation shall be sufficient notwithstanding the death of the insured named in the declarations.

The mailing of the notice shall be sufficient proof of notice and the effective date and hour of cancellation stated therein shall become the end of the policy period. Delivery of written notice shall be equivalent to mailing.

If the named insured cancels, earned premiums shall be computed in accordance with the company's short rate table and procedures. If the company cancels, earned premiums shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter, but the payment or tender of unearned premiums is not a condition of cancellation.

16. Liberalization Clause. If the company revises its policy form to grant broader coverage without additional charge, such insurance as is afforded hereunder shall be so extended or broadened effective upon adoption of such broader coverage by the company.

17. Policy Period, Territory. This insurance applies only to accidents and loss to an automobile insured hereunder which occur during the policy period in the United States of America, its territories or possessions, or Canada, or while such automobile is being transported between ports thereof, provided the described automobile is owned, maintained and used for the purposes stated in the declarations.

This insurance also applies under all coverages except coverage U to such accidents and loss in Mexico within 50 miles of the United States boundary. Loss in Mexico under Parts II and III shall be determined upon the basis of cost at the nearest United States point.

18. Declarations. By acceptance of this policy the insured named in the declarations agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

In Witness Whereof, the State Farm Fire and Casualty Company has caused this policy to be signed by its President and Secretary, at Bloomington, Illinois, and countersigned on the declarations page by a duly authorized representative of the company.

Walter J. Chemin

Edward B. Just

8-A

PRESIDENT

CF 6027 GENERAL ENDORSEMENT

In consideration of the premium at which the policy is written it is agreed that as of the effective date hereof the policy is amended in the following particulars:

6668 FINANCED-US NATL BANK OF ORE, GRANTS PASS BR,  
GRANTS PASS, ORE.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Nothing herein contained shall be held to alter, vary, waive or extend any of the terms, conditions, agreements or limitations of the undermentioned policy other than as hereinabove stated.

Effective 12:01 A.M. Standard Time, \_\_\_\_\_ Attached to and forming a part of policy number \_\_\_\_\_

Issued to \_\_\_\_\_  
by the STATE FARM FIRE AND CASUALTY COMPANY, of Bloomington, Illinois.

*Walter P. Vermin*  
Secretary

*Edward D. Ford*  
President

Countersigned \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_

by \_\_\_\_\_  
Authorized Representative

CF 6027



CF 6040.2 LOSS PAYABLE CLAUSE

It is agreed that as of the effective date hereof, the Policy is amended in the following particulars:

Loss or damage, if any, under this policy, shall be payable to Valley Finance Co,

PO Box 126, Grants Pass, Oregon

insurance as to the interest of the Conditional Vendor or Mortgagee or Assignee of Conditional Vendor or Mortgagee (hereinafter called the Lien-Holder) shall not be invalidated by any act or neglect of the Mortgagee or Owner of the within described automobile nor by any change in the title or ownership of the property; PROVIDED, however, that the wrongful conversion, embezzlement or secretion by Purchaser, Mortgagee or Lessee in possession under a mortgage, conditional sale or lease agreement of the property insured is not covered under this policy, unless specifically insured against and premium paid therefor; and PROVIDED, also, that in case the Mortgagee or Owner shall neglect to pay any premium due under this policy the Lien-Holder shall on demand pay the same.

PROVIDED, also, that the Lien-Holder shall notify this company of any change of ownership or increase of hazard which shall come to the knowledge of said Lien-Holder and, unless permitted by this policy, it shall be noted thereon and the Lien-Holder shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

This company reserves the right to cancel this policy at any time as provided therein, but in such event the company will give the Lien-Holder a notice of termination stating when, not less than ten days thereafter, such termination shall be effective.

In case of any other insurance upon the within described property this company shall not be liable under this policy for a greater proportion of any loss or damage sustained than the sum hereby insured bears to the whole amount of valid and collectible insurance on said property, issued to or held by any party or parties having an insurable interest therein whether as Owner, Lien-Holder or otherwise.

Whenever this company shall pay the Lien-Holder any sum for loss or damage under this policy and shall claim that, as to the Mortgagee or Owner, no liability therefor existed, this company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the debt, or may at its option, pay to the Lien-Holder the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the Lien-Holder to recover the full amount of its claim.

Such insurance as is afforded by the policy will not be invalidated by any error or inadvertence in the description of the automobile.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Nothing herein contained shall be held to alter, vary, waive or extend any of the terms, conditions, agreements or limitations of the undermentioned policy other than as hereinabove stated.

Effective 12:01 A.M. Standard Time, \_\_\_\_\_ . Attached to and forming a part of policy number \_\_\_\_\_

Issued to \_\_\_\_\_  
by the STATE FARM FIRE AND CASUALTY COMPANY, of Bloomington, Illinois.

*Walter F. Vermin*  
Secretary

*Edward B. Rust*  
President

Countersigned \_\_\_\_\_ 19\_\_\_\_ at \_\_\_\_\_,

by \_\_\_\_\_

CF 6040.2

Authorized Representative



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[fol. 11]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

[Title omitted]

MOTION FOR ORDER TO SHOW CAUSE—  
Filed January 22, 1965

State Farm Fire and Casualty Company moves the Court for an order requiring the defendants to appear and show cause within 10 days of service upon them of said order if served within the District of this Court, or within 20 days if served within any other Federal Court District, or within 30 days if served outside the United States, why an injunction should not issue from this Court temporarily restraining the defendants from further prosecuting any [fol. 12] pending suits against plaintiff or the defendant Ellis D. Clark or from instituting like proceedings before this or any other court pending the determination of this Court in the Action in the Nature of Interpleader filed herein.

In support of such motion, plaintiff relies upon its pleading filed herein and Title 28, Section 2361, U.S.C.A.

Williams, Skopil & Miller, By Al J. Laue, Of Attorneys for Plaintiff.

Williams, Skopil & Miller, Attorneys at Law, Pioneer Trust Building, Salem, Oregon.

[File endorsement omitted]

[fol. 13]

## IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil No: 65-30

[Title omitted]

## ORDER TO SHOW CAUSE—January 22, 1965

To: Ellis D. Clark, Kenneth Glasgow, Theron Nauta, Alice Attneave, James Briggs, Gladys Bushyhead, Henry Carey, Maxine Carey, Mary Shisefski, Lillian G. Fisher, Mildred Forrester, Cleo Foster, Gail R. Gregg, Gladys Hart, Gary L. Henry, Helen C. Hohensinner, Edward Hollenbeck, Richard E. A. James, Mary Ann Jones, Barbara McGalliand, Maria Martin, Thomas Merrick, Zola Moyden, Mary Pooley, Doris Rogers, Allan Schmidt, Burl Simington, Maggehelte Smit, Eva Smith, Harry Smith, Jennifer Sibbit, Katherine Tashire, Ronald N. Tate, Lucille Westover, Richard L. Walton, John Doe Wilson, Donald Wood, Johnathon Ziady, Greyhound Lines, Inc

You, and each of you, are hereby ordered within 10 days of service upon you of this order, if served within the District of this Court, or within 20 days if served within any other Federal Court District, or within 30 days if served outside the United States, to appear and show cause in writing, if there is any, why an order of this Court should [fol. 14] not be entered temporarily restraining you from instituting or prosecuting any proceeding in any state of United States Court affecting the property or obligation involved in this interpleader action, and specifically against the plaintiff and the defendant Ellis D. Clark.

All of Which Is Considered, Ordered and Adjudged this 22nd day of January, 1965.

William G. East, Judge.

[File endorsement omitted]

[fol. 15]

[Stamp—U. S. District Court—District of Oregon—Filed  
April 13 1965—Keith Burns, Clerk, By H. Jorgensen,  
Deputy]

**SUMMONSES AND RETURNS**

**UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF OREGON**

**Civil Action File No. 65-30**

**STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,**

**vs.**

**ELLIS D. CLARK, KENNETH GLASGOW, THERON NAUTA, ALICE  
ATTNEAVE, JAMES BRIGGS, GLADYS BUSHYHEAD, HENRY  
CAREY, MAXINE CAREY, MARY SHISEFSKI, LILLIAN G.  
FISHER, MILDRED FORRESTER, CLEO FOSTER, GAIL R.  
GREGG, GLADYS HART, GARY L. HENRY, HELEN C. HOHEN-  
SINNER, EDWARD HOLLENBECK, RICHARD E. A. JAMES,  
MARY ANN JONES, BARBARA MCGALLIAND, MARIA MARTIN,  
THOMAS MERRICK, ZOLA MOYDEN, MARY POOLEY, DORIS  
ROGERS, ALLAN SCHMIDT, BURL SIMINGTON, MAGGHELTSE  
SMIT, EVA SMITH, HARRY SMITH, JENNIFER SIBBIT,  
KATHERINE TASHIRE, RONALD N. TATE, LUCILLE WEST-  
OVER, RICHARD L. WALTON, JOHN DOE WILSON, DONALD  
WOOD, JOHNATHON ZIADY, GREYHOUND LINES, INC.,  
Defendants.**

**To the following named Defendants: Henry Carey, Burl  
Simington, Alice Attneave, Theron Nauta, Kenneth Glas-  
gow, Katherine Tashire, Ellis C. Clark, Greyhound Lines,  
Inc.**

**You are hereby summoned and required to appear and  
defend this action and to serve upon Williams, Skopil &**



Miller; Al J. Laue plaintiff's attorneys, whose address is 4th Floor, Pioneer Trust Building Salem, Oregon an answer to the complaint which is herewith served upon you, within ten days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Keith Burns, Clerk of Court, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: January 22, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Form No. 104-200  
Edition 4-25-64

## RETURN ON SERVICE OF WRIT

United States of America,

DISTRICT OF Oregon

ss:

I hereby certify and return that I served the annexed Summons, Action in Interpleader, Order  
 and Order to Show Cause Henry Caray  
 on the therein-named Henry Caray  
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with Gracie Caray, mother  
(Individual, or agent of company, corporation, etc.)

personally at 512 W. Fargo St.  
(Address—Street number, apartment number,  
 rural route, etc.)

at Portland, Oregon in the said District  
(City) (State)  
 at 5:25 a/m—p. m., on the 26th day of January, 19 65.

Marshal's fees 6.00

Mileage none  
 Total \$6.00

Eugene G. Hulett

United States Marshal

By Raymond O. Hume  
Deputy

Deputy

U. S. GOVERNMENT PRINTING OFFICE 16-77777-2

Marshal's Civil No. 7073  
 Civil No. 65-30

Form No. 104a-600  
Revised 4-22-61

## RETURN ON SERVICE OF WRIT

United States of America,

District of Oregon ss:

I hereby certify and return that I served the annexed Summons, Action in Interpleader, Order  
 and Order to Show Cause (With)  
 on the therein-named Earl Simington (Earl is correct)  
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with Mrs. Mamie Simington, mother  
(Individual or agent of company, corporation, etc.)

personally at 2416 N. Flint (Address—Street number, apartment number,  
 rural route, etc.)

at Portland, Oregon (City) in the said District (State)

at 5:45 4 1/2 p. m., on the 26th, day of January, 19 62.

Marshal's fees 6.00

Mileage .48  
 Total \$6.48

Eugene G. Hulett

United States Marshal.

By Raymond O. Hume  
 Raymond O. Hume Deputy.

U. S. GOVERNMENT PRINTING OFFICE 16-57777-6

Marshal's Civil No. 7073  
 Civil No. 65-30

Form No. 128M 9-55  
Revised 7-25-55

## RETURN ON SERVICE OF WRIT

United States of America,

DISTRICT OF Oregon

ss:

I hereby certify and return that I served the annexed Summons, Action in Interpleader, Order  
and Order to Show Cause (Writ)  
 on the therein-named Alice Attneave

(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with her

(Individual or agent of company, corporation, etc.)

personally at Rt. 1 Box 319N(Address—Street number, apartment number,  
rural route, etc.)at Eugene, Oregon

(City)

in the said District

at 8:30 a. m. p/m, on the 28th day of Jan., 19 65.

Eugene G. Hulett

United States Marshal

Marshal's fees 6.00

none

Mileage

Total

\$6.00

By

Raymond O. Hume

Deputy.

U. S. GOVERNMENT PRINTING OFFICE: 16-57777-2

Marshal's Civil No. 7073

Civil No. 65-30



20  
[fol. 19]

Form No. 104a 500  
Edition 4-22-64

# RETURN ON SERVICE OF WRIT

United States of America,

DISTRICT OF Oregon

ss:

I hereby certify and return that I served the annexed Summons, Action in Interpleader, Order  
and Order to Show Cause (Writ)  
on the therein-named Katherine TASHIRO (TASHIRO is correct)  
(Individual, partnership, corporation, etc.)

by handing to and leaving a true and correct copy thereof with her

(Individual or agent of company, corporation, etc.)

personally at Apt. #9-751 S. 14th. Ave.

(Address—Street number, apartment number,  
rural route, etc.)

at EUGENE  
Oregon (City)

(State) in the said District

at 10:30 a.m. p/h, on the 28th day of Jan., 19 65,

Marshal's fees 6.00

Eugene G. Hulatt

United States Marshal

Mileage none  
Total \$6.00

By

Raymond O. Hume

Deputy.

U. S. GOVERNMENT PRINTING OFFICE 16-7777-2

Marshal's Civil No. 7073  
Civil No. 65-30

Form No. URM 988  
Edition 4-22-61

## RETURN ON SERVICE OF WRIT

United States of America,

DISTRICT OF OREGON

ss:

I hereby certify and return that I served the annexed SUMMONS AND ORDER TO SHOW CAUSE  
 on the therein-named ELLIS D. CLARK, ET AL, (Writ)  
 (Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with together with a true and  
 correct copy of the ACTION IN INTERPLEADER MOTION FOR ORDER TO SHOW CAUSE  
 ON MR. THERON NAUTA (Individual or agent of company, corporation, etc.)

personally at his home ranch about 1 1/2 miles So. of Keno on Worden Road  
 (whose P.O. Box number is 52) (Address—Street number, apartment number,  
 rural route, etc.)

at KLAMATH FALLS, Oregon in the said District  
 (City) (State)  
 at 5:00 4:44 p. m. on the 23rd day of February, 19 65.

Marshall's fees 3.00 Order  
3.00 Summ  
 Mileage 70.80

Cost this service \$76.80

Eugene C. H.lett  
 United States Marshal  
 District of Oregon  
 United States Marshal

By Clarance A. Disney  
 CLARENCE A. DISNEY  
 DEPUTY U. S. MARSHAL Deputy

U. S. GOVERNMENT PRINTING OFFICE 16-57777-2

Court Civil No. 65-30

Oregon Marshal's Civil No. 7073

22  
[fol. 21]

Form No. 104B 500  
Edition 4-25-64

### RETURN ON SERVICE OF WRIT

United States of America,

District of Oregon

ss:

I hereby certify and return that I served the annexed Summons, Action in Interpleader, Order  
and Order to Show Cause (Writ)  
on the therein-named Ellis C. CLARK (D. is correct)  
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with him

(Individual or agent of company, corporation, etc.)

personally at 800 N.E. 7th.

(Address—Street number, apartment number,

rural route, etc.)

at Grants Pass, Oregon

(City)

in the said District

(State)

at 3:40 a/m p. m., on the 28th. day of Jan., 19 65.

Marshal's fees 6.00

Eugene G. Hullett

United States Marshal.

Mileage none  
Total \$6.00

By

Raymond O. Hume

Deputy.

U. S. GOVERNMENT PRINTING OFFICE 16-71777-2

Marshal's Civil No. 7073  
Civil No. 65-30

Form No. DSM 505  
Edition 4-25-55

## RETURN ON SERVICE OF WRIT

United States of America,

DISTRICT OF Oregon

ss:

I hereby certify and return that I served the annexed Summons, Action in Interpleader, Order  
and Order to Show Cause (Writ)  
on the therein-named Kenneth GLASGOW  
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with him  
(Individual or agent of company, corporation, etc.)

personally at 704 S. Shasta  
(Address—Street number, apartment number,  
rural route, etc.)

at Eagle Point, Oregon in the said District.  
(City) (State)  
at 4:55 a.m. p. m., on the 28th day of Jan., 19 65.

Marshal's fees 6.00

Eugene G. Hulett

United States Marshal.

Mileage 619m. 74.28  
Total \$80.28

By Raymond O. Hume  
Deputy.

U. S. GOVERNMENT PRINTING OFFICE 16-57777-2

Marshal's Civil No. 7073  
Civil No. 65-90



Form No. UCM 999  
Edition 4-22-44

**Editorial 4-22-21**

## RETURN ON SERVICE OF WRIT

United States of America.

DISTRICT OF OREGON

442

I hereby certify and return that I served the annexed SUMMONS AND ORDER TO SHOW CAUSE  
(Write)  
on the therein-named GREYHOUND LINS, INC., ET AL,  
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with \_\_\_\_\_ together with a true and  
correct copy of the ACTION IN INTERPRETER with the C.T. Corporation  
(Individual or agent of company, corporation, etc.)  
System for the GREYHOUND LINES, INC.,

personally at \_\_\_\_\_ the office \_\_\_\_\_ at Room 800 of the Pacific Building \_\_\_\_\_  
at 520 S.W. Yamhill Street \_\_\_\_\_ (Address—Street number, apartment number, \_\_\_\_\_)

at PORTLAND, OREGON in the said District  
(City) (State)  
at 2:40 a/m - p. m., on the 26th day of JANUARY, 19 65.

Marshal's fees 6.00 United States Marshal.

Mileage none By

Cost this service **\$2.00**

Court Civil No. 65-30

Oregon Marshal's Civil No. 7073

Eugene C. Rullett  
United States Marshal  
District of Oregon

CELESTINE L. DIZNEY  
EDDY W. L. MARSHALL

UNITED STATES MARSHAL

Portland, Oregon

RECEIVED  
UNITED STATES MARSHAL  
SAN FRANCISCO, CALIF.

865 JAN 26 1965

Date January 25, 1965

Edward A. Heslep  
United States Marshal

District of California - Northern

Oregon Marshal's No. 7073  
Court Civil No. 65-30

Dear Sir:

(cc)

Please accept the enclosed process, issued and recorded in this district, for service within your district. When service is completed list your expenses with your return on the process and mail it back to this office.

( )

The enclosed process was received via mail direct. Our service having been completed it is forwarded to be recorded in your district. Our return and expenses are noted on the process.

Very truly yours,

EUGENE G. HULETT  
United States Marshal  
District of Oregon

Pursuant to Manual pages 404.04 and 507.04 - Bul. 38 Item 4

*Allen D. Lindley*  
Allen D. Lindley

Chief Deputy.

STATE FARM FIRE AND CASUALTY COMPANY  
vs  
ELLIS D. CLARK, et al.

Marshal's No. 7073  
Court Civil No. 65-30

SERVE:

1-27 FORRESTER, Mildred  
1930 Haste Street  
Berkeley, Calif.

2-23 HART, Gladys  
1325 19th. Ave.  
San Francisco, Calif.

SIBBIT, Jennifer  
81 Cambridge Heights  
Novato, California

2-3 ZAIDY, Johnathan  
276 32nd. Street  
San Francisco, Calif.

1-26 BUSHYHEAD, Gladys  
1312 92nd. Ave.  
Oakland, Calif.

RH. POTTER, Cleo  
1133 Laguna St.  
San Francisco, Calif.

2-5 SCHMIDT, Allan  
43 Kinross St.  
San Rafael, Calif.

1-31 WOOD, Donald  
1422 Silvia St. 3100 Wheeler St.  
Berkeley, Calif.



UNITED STATES MARSHAL

Portland, Oregon

Date January 25, 1965

George E. O'Brien  
United States Marshal

District of California-Southern

Oregon Marshal's No. 7073  
Court Civil No. 65-30

Dear Sir:

(xxx) Please accept the enclosed process, issued and recorded in this district, for service within your district. When service is completed list your expenses with your return on the process and mail it back to this office.

NO ORIGINAL SUBS

( ) The enclosed process was received via mail direct. Our service having been completed it is forwarded to be recorded in your district. Our return and expenses are noted on the process.

Very truly yours,

STATE FARM FIRE AND CASUALTY CO.  
vs  
ELLIS D. CLARK, et al

EUGENE G. HULETT  
United States Marshal  
District of Oregon

Pursuant to Manual pages 404.04 and 507.04 - Bull. 38 Item 4

Allan D. Lindley  
Chief Deputy.

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[fol. 27]

UNITED STATES MARSHAL

Portland, Oregon

Date January 25, 1965

Edward A. Healey  
United States Marshal

District of ~~California~~ Northern.

Oregon Marshal's No. 7073  
Court Civil No. 65-30

Dear Sir:

(cc)

Please accept the enclosed process, issued and recorded in this district, for service within your district. When service is completed list your expenses with your return on the process and mail it back to this office.

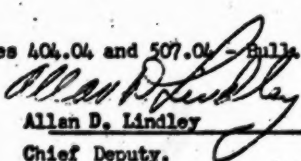
( )

The enclosed process was received via mail direct. Our service having been completed it is forwarded to be recorded in your district. Our return and expenses are noted on the process.

Very truly yours,

EUGENE G. HULETT  
United States Marshal  
District of Oregon

Pursuant to Manual pages 404.04 and 507.04 - Rule 38 Item 4

  
Allan D. Lindley

Chief Deputy.

UNITED STATES MARSHAL

Portland, Oregon

Date January 25, 1965

Leonard T. Hackathorn  
United States Marshal

District of South Dakota

Oregon Marshal's No. 7073  
Court Civil No. 65-30

Dear Sir:

XXXX

Please accept the enclosed process, issued and recorded in this district, for service within your district. When service is completed list your expenses with your return on the process and mail it back to this office.

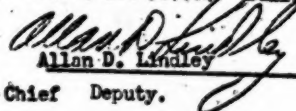
( )

The enclosed process was received via mail direct. Our service having been completed it is forwarded to be recorded in your district. Our return and expenses are noted on the process.

Very truly yours,

EUGENE G. HULETT  
United States Marshal  
District of Oregon

Pursuant to Manual pages 404.04 and 507.04 - Bull. 38 Item 4

  
Allan D. Lindley  
Chief Deputy.



## UNITED STATES MARSHAL

Portland, Oregon

Date January 25, 1965George A. Bakovets  
United States MarshalDistrict of MontanaMarshal's No. 7073  
Court No. 65-30

Dear Sir:

(enck)

Please accept the enclosed process, issued and recorded in this district, for service within your district. When service is completed list your expenses with your return on the process and mail it back to this office.

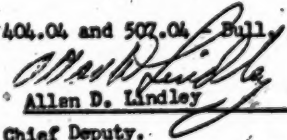
( )

The enclosed process was received via mail direct. Our service having been completed it is forwarded to be recorded in your district. Our return and expenses are noted on the process.

Very truly yours,

EUGENE G. HULETT  
United States Marshal  
District of Oregon

Pursuant to Manual pages 404.04 and 507.04 - Bull. 38 Item 4

  
Allen D. Lindley

Chief Deputy.

UNITED STATES MARSHAL

Portland, Oregon

Date January 25, 1965

Donald F. Miller  
United States Marshal

District of Washington - Western

Dear Sir:

(X) Please accept the enclosed process, issued and recorded in this district, for service within your district. When service is completed list your expenses with your return on the process and mail it back to this office.

( ) The enclosed process was received via mail direct. Our service having been completed it is forwarded to be recorded in your district. Our return and expenses are noted on the process.

Very truly yours,

EUGENE G. HULETT  
United States Marshal  
District of Oregon

Pursuant to Manual pages 404.04 and 507.04 - Bull. 38 Item 4

  
Allen D. Lindley

Chief Deputy.

Oregon Marshal's No. 7073  
Court Civil No. 65-30

*Receipt*

UNITED STATES MARSHAL  
Portland, Oregon

Date January 25, 1965

Leonard T. Hackathorn  
United States Marshal  
District of South Dakota

Oregon Marshal's No. 7073  
Court Civil No. 65-30

Dear Sir:

(XXX)

Please accept the enclosed process, issued and recorded in this district, for service within your district. When service is completed list your expenses with your return on the process and mail it back to this office.

X

The enclosed process was received via mail direct. Our service having been completed it is forwarded to be recorded in your district. Our return and expenses are noted on the process.

Very truly yours,

EUGENE G. HULETT  
United States Marshal  
District of Oregon

Pursuant to Manual pages 404.04 and 507.04 - Rule 38 Item 4

*Allan D. Lindley*  
Allan D. Lindley  
Chief Deputy.

*Endeavor South Dakota*



[fol. 32]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Civil Case No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

—vs.—

ELLIS D. CLARK, GREYHOUND LINES INC., et al., Defendants.

UNITED STATES MARSHAL'S ENDEAVOR OF SERVICE OR SUMMONS, ACTION IN INTERPLEADER, EXHIBIT, ORDER AND ORDER TO SHOW CAUSE

Received the within and attached Summons, Action In Interpleader, Exhibit, Order and Order to show cause, on the 1st. day of February, 1965, at Rapid City, South Dakota, and, after due and diligent search and inquiry, I was unable to locate the with-in named Gary L. Henry, within the District of South Dakota. I have been reliably informed by Dorothy Henry, sister of Gary L. Henry, of 2011 Jennings Street, Hot Springs, South Dakota, that the said Gary L. Henry has moved to 670 west 10th. Street, Eugene, Oregon and is reported to be enrolled in a trade school in Eugene, Oregon. I therefore return this writ Not Served or Executed.

Dated at Rapid City, South Dakota, this 3rd. of February, 1965.

Leonard T. Heckathorn, United States Marshal, District of South Dakota, By: Donald H. Herman, Deputy.

Marshal's Fees

Mileage on Endeavor

(116 Mi.) to serve ..... \$13.92

Forwarding Fee ..... \$ 1.00

34  
[fol. 33]

STATE FARM FIRE & CASUALTY CO. VS. ELLIS D. CLARK, et al

Oregon  
#65-30

Form No. 1000 500  
Revised 4-22-55

RETURN ON SERVICE OF WRIT

United States of America,  
Southern DISTRICT OF California ss:

Summons, Action in Interpleader,  
Motion for Order to Show Cause and  
Order to Show Cause  
(Write)

I hereby certify and return that I served the annexed  
on the therein-named James Briggs  
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with Him  
(Individual or agent of company, corporation, etc.)

personally at 2345 Haliotropa Drive  
(Address—Street number, apartment number,  
rural route, etc.)

at Santa Ana California in the said District  
(City) (State)  
at 8:55 ~~min~~ p. m., on the 3rd day of March, 19 65

Out of Dist. Fee \$2.00

Marshal's fees \$6.50

Mileage 11.56

GEORGE E. O'BRIEN

United States Marshal.

By L. H. Hayes, Jr.  
(L. H. Hayes, Jr.) Deputy.

(Sent in 2<sup>nd</sup> class mail)

U.S. GOVERNMENT PRINTING OFFICE: 1962-O-572719

Total = \$18.56

Form No. USM 202  
Edition 4-22-55

## RETURN ON SERVICE OF WRIT

United States of America,

Northern District of California

ss: Civil No. 65-30 Oregon

By *S. J. Gispencio*I hereby certify and return that I served the annexed Summons and Action in  
Interpleader (Writ)on the therein-named Gladys Bushyhead  
(Individual, company, corporation, etc.)by handing to and leaving a true and correct copy thereof with Gladys Bushyhead  
(Individual or agent of company, corporation, etc.)personally at 1312 - 92nd Avenue  
(Address—Street number, apartment number,

Fural route, etc.)

at Oakland California in the said District  
(City) (State)  
at a. m.—p. m., on the 26th day of January, 1965

Marshal's fees	\$3.00
Forwarding fee	1.00
Mileage	4.56
Endv. 1-26-65	4.56
	<u>\$13.12</u>

EDWARD A. HENNER

United States Marshal

By

*Thomas P. McGowan*  
Thomas P. McGowan,

Deputy.



Form No. URM 288  
Edition 4-22-48

## RETURN ON SERVICE OF WRIT

United States of America,  
Northern DISTRICT OF California

ss. Civil No. 65-30 Oregon

I hereby certify and return that I served the annexed Motion and Order to Show Cause  
(With)  
on the therein-named Gladys Bushyhead  
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with Gladys Bushyhead  
(Individual or agent of company, corporation, etc.)

personally at 1312 - 92nd Avenue  
(Address—Street number, apartment number,  
rural route, etc.)

at Oakland California in the said District  
(City) (State)

at \_\_\_\_\_ a. m.—p. m., on the 26th day of \_\_\_\_\_, 19\_\_\_\_

Marshal's fees \$3.00  
Forwarding fee 1.00

Mileage 4.00

EDWARD A. HESLER,

United States Marshal

By

Thomas P. McGowan  
Thomas P. McGowan Deputy.

Form No. USM 228  
Edition 6-22-55

## RETURN ON SERVICE OF WRIT

United States of America,

Northern District of California

ss: Civil No. 65-30 Oregon

I hereby certify and return that I served the annexed Summons and Action in  
Interpleader Mildred Forrester (Writ)  
 on the therein-named \_\_\_\_\_  
 (Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with Mildred Forrester  
 \_\_\_\_\_  
 (Individual or agent of company, corporation, etc.)

personally at 1930 Haste Street  
 \_\_\_\_\_  
 (Address—Street number, apartment number,  
 rural route, etc.)

at Berkeley California in the said District  
 (City) (State)  
 at \_\_\_\_\_ a. m.—p. m., on the 27th day of January, 1965

Marshal's fees \$3.00  
 Forwarding fee 1.00  
 Mileage 3.60  
\$ 7.60

EDWARD A. HESTER  
 United States Marshal.  
 By Thomas P. McGowan, Deputy.

Form No. 100-100  
Edition 1-23-25

## RETURN ON SERVICE OF WRIT

United States of America,  
Northern District of California

ss: Civil No. 65-30 Oregon

I hereby certify and return that I served the annexed Motion and Order to Show Cause  
(Writ)  
on the therein-named Mildred Forrester  
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with Mildred Forrester

(Individual or agent of company, corporation, etc.)

personally at 1930 Haste Street(Address—Street number, apartment number,  
rural route, etc.)

at Berkeley California in the said District  
(City) (State)

at a. m.—p. m., on the 27th day of 19

Marshal's fees \$3.00  
Forwarding fee 1.00  
Mileage 4.00

EDWARD A. HESLEY,

United States Marshal

By

Thomas P. McGowan Deputy.

Form No. URM 200  
Edition 4-23-64

## RETURN ON SERVICE OF WRIT

United States of America,

Northern DISTRICT OF California

ss: Civil No. 65-30 Oregon

I hereby certify and return that I served the annexed Summons and Action in  
Interpleader (Writ)on the therein-named Donald Wood

(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with Linda Wood, wife, a  
competent adult who resides at the usual place of abode of defendant,  
(Individual or agent of company, corporation, etc.)personally at 3100 Wheeler(Address—Street number, apartment number,  
rural route, etc.)at Berkeley California in the said District  
(City) (State)at a. m.—p. m., on the 31st day of January, 19 65

Marshal's fees	\$3.00
Forwarding fee	1.00
Mileage	3.36
Endv. 1-28-65	3.60
Endv. 1-29-65	3.36
Endv. 1-30-65	3.36

17.68

EDWARD A. HESLER

United States Marshal

By

Thomas P. McGowan,

Deputy.

U.S. GOVERNMENT PRINTING OFFICE: 1963-O-473716



Form No. 1004 2-58  
Edition 4-23-55

RETURN ON SERVICE OF WRIT

United States of America,  
Northern DISTRICT OF California

ss: Civil No. 65-30 Oregon

I hereby certify and return that I served the annexed Motion and Order to Show Cause  
(Write)  
on the therein-named Donald Wood  
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with Linda Wood, wife, a  
competent adult who resides at the usual place of abode of defendant  
(Individual or agent of company, corporation, etc.)

personally at 3100 Wheeler  
(Address—Street number, apartment number,  
rural route, etc.)

at Berkeley California in the said District  
(City) (State)  
at        a. m.—p. m., on the 31st day of January, 19 65

Marshal's fees \$3.00  
Forwarding fee 1.00  
Mileage         
Total \$4.00

EDWARD A. HESLEY,

United States Marshal

By

Thomas P. McGowan Deputy

Form No. UNM 208  
Edition 4-23-65

## RETURN ON SERVICE OF WRIT

United States of America,  
Northern DISTRICT OF California

ss: Civil-65-30, Oregon

I hereby certify and return that I served the annexed summons  
(Write)  
on the therein-named Jennifer Sibbitt at her usual place of abode.  
(Individual, company, corporation, etc.)by handing to and leaving a true and correct copy thereof ~~with~~ together with a copy of  
the action in interpleader to J. Paul Sibbitt a person of suitable age and  
(Individual or agent of company, corporation, etc.)  
discretion residing therein.personally at 81 Cambridge Heights(Address—Street number, apartment number,  
rural route, etc.)at Novato, California  
(City)

(State) in the said District

at 5:30 ~~PM~~ PM—p. m., on the 8th day of February, 19 65

Edward A. Heslep

United States Marshal

By Stanley W. Fogler

Deputy.

Marshal's fees	\$ 3.00
Forwarding fee	1.00
Mileage	\$ 6.48
End. 2/5	\$ 6.48
End. 2/7	\$ 6.48

3.44

U.S. GOVERNMENT PRINTING OFFICE: 1962-O-475728

REPORT OF ENDEAVORDATE 2/8/65 MARSHAL'S NUMBER \_\_\_\_\_ CIVIL NO. 65-30 OregonCASE State Farm Fire VS. Ellis D. ClarkCOMPANY OR PERSON Jennifer Sibbit whose real name is Jennifer SibbittPLACE ENDEAVORED 81 Cambridge Heights, Novato, CaliforniaREASON NOT SERVED Jennifer Sibbitt is attending school at the University of Oregon. She is living at 1442 East 18th St. Apt. # 13, Eugene, Oregon.

WRIT HELD FOR FURTHER ACTION \_\_\_\_\_

(check)

WRIT RETURNED \_\_\_\_\_

(date)

TRAVEL \$ \_\_\_\_\_

Stanley W. Fogler

Deputy

Form No. USM 288  
Edition 4-23-54

## RETURN ON SERVICE OF WRIT

United States of America,

DISTRICT OF

ss: State Farm vs Ellis D. Clark et al

I hereby certify and return that I served the annexed Order to show cause and Motion for  
 order to show cause (Writ)  
 on the therein-named Jennifer Sibbit (True name spelling Sibbitt)  
 (Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with her

(Individual or agent of company, corporation, etc.)

personally at 1442 E. 18th Avenue Apt. 13

(Address—Street number, apartment number,

rural route, etc.)

at Eugene Oregon in the said District.  
 (City) (State)

at 3:20 PM p. m., on the 3rd. day of March, 1965.

Marshal's fees \$ 3.00

Mileage 28.80

Total \$31.80

Eugene G. Hulett

United States Marshal

By

Allan D. Lindley  
 Chief Deputy

U. S. GOVERNMENT PRINTING OFFICE 16-57777-2

Civil 65-30  
 Marshal's No. 7073



Form No. URM 500  
Edition 4-25-64

## RETURN ON SERVICE OF WRIT

United States of America,  
Northern DISTRICT OF California ss: Civil-65-30 Oregon

I hereby certify and return that I served the annexed summons  
(With)  
on the therein-named Cleo Foster  
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof ~~with~~ together with a copy of  
the interpleader with Cleo Foster.  
(Individual or agent of company, corporation, etc.)

personally at 1133 Laguna St. Apt. 707  
(Address—Street number, apartment number,

rural route, etc.)  
at San Francisco, California in the said District  
(City) (State)  
at 4:35 PM—p. m., on the 23rd day of February, 19 65

Marshal's fees \$ 3.00  
Forwarding fee 1.00  
Mileage \$ .48  
Endv. 2-2-65 .48  
Endv. 2-10-65 .48

5.44

Edward A. Heslep  
Stanley W. Fogler United States Marshal,  
By Deputy.

Form No. 104M 500  
Edition 4-22-55

## RETURN ON SERVICE OF WRIT

United States of America,

Northern District of California

vs:

Civil-65-30 Oregon

I hereby certify and return that I served the annexed Order to Show Cause  
 on the therein-named Cleo Foster (Writ)

(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with Cleo Foster

(Individual or agent of company, corporation, etc.)

personally at 1133 Laguna St. Apt. 707(Address—Street number, apartment number,  
or rural route, etc.)at San Francisco, California

(City)

(State)

in the said District

at 4:35 pm—p. m., on the 23rd day of February, 19 65

Marshal's fees \$ 3.00  
 Forwarding fee 1.00

Mileage 4.00

Edward A. Heslep

United States Marshal

By Stanley W. Fogler

Deputy.

## RETURN OF NON-SERVICE OF WRIT

OFFICE OF UNITED STATES MARSHAL }  
NORTHERN DISTRICT OF CALIFORNIA } ss. Civil-65-30 Oregon

I hereby certify that I received the annexed summons, Interpleader  
and Order to Show Cause.

on 1/28/, 1965, and returned the same not served as  
to Gladys Hart

Address 1374 19th Ave., San Francisco, California.

on 2/24, 19 65. REASON: Gladys Hart is now living  
in Corpus Christi, Texas. Address is unknown.

Expense \$

41.68

EDWARD A. NESLEP  
United States Marshal

By Stanley W. Fogler  
Stanley W. Fogler Deputy

Form No. USM 222  
Edition 4-23-55

## RETURN ON SERVICE OF WRIT

United States of America,  
Northern District of California

ss: Civil-65-30 Oregon

I hereby certify and return that I served the annexed summons (Writ)  
on the therein-named Johnathan Zaidy, at his usual place of abode.  
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof ~~with~~ together with a copy of  
the interpleader with Ruth Zaidy, a person of suitable age and discretion  
(Individual or agent of company, corporation, etc.)  
residing therein.

personally at 276 32nd Ave.(Address—Street number, apartment number,  
rural route, etc.)at San Francisco, California(City)(State)

in the said District

at 8:45 a.m. ~~p.m.~~ on the 3rd day of February, 19 65Edward A. HeslepUnited States MarshalBy Stanley W. FoglerDeputy.

Marshal's fees \$ 3.00

Forwarding fee 1.00

Mileage \$ 1.44

End. 2/2 \$ 1.44

6.88

U.S. GOVERNMENT PRINTING OFFICE: 1955-O-372716



48

[fol. 47]

USM-43-11  
(Rev. 2-9-65)

REPORT OF ENDEAVOR

Northern Dist. of California

DATE 2-3-65 MARSHAL'S NUMBER \_\_\_\_\_ CIVIL NO. 65-30 Oregon

CASE State Farm Fire & Cas. Co. vs. Ellis D. Clark, et al.

COMPANY OR PERSON Johnathon Ziady

PLACE ENDEAVORED 276 - 32nd Avenue, San Francisco, Calif.

REASON NOT SERVED J. Ziady was not home - is attending school at the Univ. of Oregon, Eugene, Oregon. Lives at 608 E. 15th St., Eugene.

WRITE HELD FOR FURTHER ACTION \_\_\_\_\_  
(check)

WRITE RETURNED \_\_\_\_\_  
(Date)

Edward A. Heslep, U.S. Marshal

TRAVEL \$ \_\_\_\_\_

Stanley W. Fogler  
Deputy

Form No. 100-100  
Edition 4-19-65

## RETURN ON SERVICE OF WRIT

United States of America,

DISTRICT OF Oregon

ss: 65-30

I hereby certify and return that I served the annexed Order to Show Cause & Motion For  
Order To Show Cause (With)on the therein-named Johnathon Ziad

(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with him

(Individual or agent of company, corporation, etc.)

personally at 608 E. 15th. Avenue(Address—Street number, apartment number,  
rural route, etc.)at Eugene

(City)

Oregon

(State)

in the said District

at 5:10 WOMX-p. m., on the 3rd. day of March, 19 65.Marshal's fees \$3.00Eugene G. Hulett

United States Marshal

Mileage ---By Allan D. Lindley

Allan D. Lindley

Chief Deputy

U. S. GOVERNMENT PRINTING OFFICE 16-57777-2

Marshal's No. 7073

50

[fol. 49]

Form No. USM 288  
Edition 4-27-55

## RETURN ON SERVICE OF WRIT

United States of America,  
Northern DISTRICT OF California

SS: Civil-65-30 Oregon

I hereby certify and return that I served the annexed summons  
(Writ)  
on the therein-named Allan Schmidt  
(Individual, company, corporation, etc.)Action of Interpleader  
by handing to and leaving a true and correct copy thereof with John Schmidt, a person  
of suitable age and discretion residing therein.  
(Individual or agent of company, corporation, etc.)personally at 43 Kinross St.(Address—Street number, apartment number,  
rural route, etc.)at San Rafael, California  
(City)

(State)

in the said District

at 5:00 ~~PM~~ p. m., on the 5th day of February, 19 65

Forwarding fee \$ 1.00

Marshal's fees \$ 3.00

Mileage \$ 5.28

7.28

Edward A. Heslep

United States Marshal

By Stanley W. Fogler

Deputy.

U.S. GOVERNMENT PRINTING OFFICE: 1955-O-575716

REPORT OF ENDEAVORDATE 2/5/65 MARSHAL'S NUMBER \_\_\_\_\_ CIVIL NO. Oregon 65-30CASE State Farm VS. Allan Schmidt, et al.COMPANY OR PERSON Allan SchmidtPLACE ENDEAVORED 43 Kinross, San Rafael, California.REASON NOT SERVED Allan Schmidt was not home. He may be located at 1505 Orchard St., Apt. # 30, Eugene, Oregon. He is attending school at the University of Oregon.  
(check)

WRIT RETURNED \_\_\_\_\_

(date)

Edward A. Heslep, United States Marshal

TRAVEL \$ \_\_\_\_\_

Stanley W. Fogler

Deputy

(For information only)



52  
[fol. 51]

Form No. 1044 9-58  
Revised 4-22-54

# RETURN ON SERVICE OF WRIT

United States of America,

DISTRICT OF Oregon

ss: STATE FARM et al vs ELLIS CLARK et al

I hereby certify and return that I served the annexed Order To Show Cause & Motion for  
Order To Show Cause (Writ)  
on the therein-named Allan Schmidt  
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with him

(Individual or agent of company, corporation, etc.)

personally at 1505 Orchard Street Apt. 30

(Address—Street number, apartment number,  
rural route, etc.)

at Eugene Oregon in the said District

(City)

(State)

at 3:00 XXX—p. m., on the 3rd. day of March, 19 65.

Marshal's fees \$3.00

Eugene G. Hulett

United States Marshal

Mileage - - -

By Allan D. Lindley Chief Deputy

U. S. GOVERNMENT PRINTING OFFICE 16-7777-2

Civil 65-30

Marshal's No. 7073

[fol. 52]

[Stamp—U. S. District Court, District of Oregon—Filed  
Apr 13 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

vs.

ELLIS D. CLARK, KENNETH GLASGOW, THERON NAUTA, ALICE  
ATTNEAVE, JAMES BRIGGS, GLADYS BUSHYHEAD, HENRY  
CAREY, MAXINE CAREY, MARY SHISEFSKI, LILLIAN G.  
FISHER, MILDRED FORRESTER, CLEO FOSTER, GAIL R.  
GREGG, GLADYS HART, GARY L. HENRY, HELEN C. HOHEN-  
SINNER, EDWARD HOLLENBECK, RICHARD E. A. JAMES,  
MARY ANN JONES, BARBARA MCGALLIAND, MARIA MARTIN,  
THOMAS MERRICK, ZOLA MOYDEN, MARY POOLEY, DORIS  
ROGERS, ALLAN SCHMIDT, BURL SIMINGTON, MAGGSCHELTSE  
SMIT, EVA SMITH, HARRY SMITH, JENNIFER SIBBIT,  
KATHERINE TASHIRE, RONALD N. TATE, LUCILLE WEST-  
OVER, RICHARD L. WALTON, JOHN DOE WILSON, DONALD  
WOOD, JOHNATHON ZIADY, GREYHOUND LINES, INC.,  
Defendants.

SUMMONS

To the following named Defendant: Zola Moyden

You are hereby summoned and required to appear and  
defend this action and to serve upon Williams, Skopil &  
Miller; Al J. Laue, plaintiff's attorneys, whose address is  
4th Floor, Pioneer Trust Building, Salem, Oregon an an

swer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Keith Burns, Clerk of Court, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: January 25, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 53]

Form No. USM 999  
Edition 7-55-54

## RETURN ON SERVICE OF WRIT

United States of America,

State Farm Fire vs. Ellis D. Clark, et al  
Civil #65-30

DISTRICT OF MONTANA

ss:

I hereby certify and return that I served the annexed Summons  
(Writ)  
 on the therein-named Zola Moyden (correct name Zola Mayden)  
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with her- with copy of Action  
in Interpleader, Order and Order to Show Cause attached to Summons

(Individual or agent of company, corporation, etc.)personally at Nine Mile Creek,(Address—Street number, apartment number,rural route, etc.)

at near Huson Montana in the said District  
(City) (State)  
 at 1:40 PM on the 31st day of January, 19 65

Fwd. Fee 2.00Marshal's fees 36.00Mileage: 300 mi. 36.0044.00

George A. Bukovatz

United States Marshal

By

Deputy.

U.S. GOVERNMENT PRINTING OFFICE: 1955-O-575718



[fol. 54]

[Stamp—Received—United States Marshal—San Francisco, Calif.]

[Stamp—Received—3-3-65—Corpus Christi, Tex.]

[Stamp—U. S. District Court, District of Oregon—Filed Apr 19 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,  
vs.

ELLIS D. CLARK, KENNETH GLASGOW, THERON NAUTA, ALICE ATTNEAVE, JAMES BRIGGS, GLADYS BUSHYHEAD, HENRY CAREY, MAXINE CAREY, MARY SHISEFSKI, LILLIAN G. FISHER, MILDRED FORRESTER, CLEO FOSTER, GAIL R. GREGG, GLADYS HART, GARY L. HENRY, HELEN C. HOHENSINNER, EDWARD HOLLENBECK, RICHARD E. A. JAMES, MARY ANN JONES, BARBARA MCGALLIAND, MARIA MARTIN, THOMAS MERRICK, ZOLA MOYDEN, MARY POOLEY, DORIS ROGERS, ALLAN SCHMIDT, BURL SIMINGTON, MAGGHELTSE SMIT, EVA SMITH, HARRY SMITH, JENNIFER SIBBIT, KATHERINE TASHIRE, RONALD N. TATE, LUCILLE WESTOVER, RICHARD L. WALTON, JOHN DOE WILSON, DONALD WOOD, JOHNATHON ZIADY, GREYHOUND LINES, INC., Defendants

SUMMONS

To the following Defendants: James Briggs, Mildred Forrester, Gladys Hart, Jennifer Sibbit, Johnathan Zaidy, Gladys Bushyhead, Cleo Foster, Allan Schmidt, Donald Wood.

You are hereby summoned and required to appear and defend this action and to serve upon Williams, Skopil & Miller; Al J. Laue, plaintiff's attorneys, whose address is 4th Floor, Pioneer Trust Building, Salem, Oregon an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Keith Burns, Clerk of Court, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: January 25, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure,

[fol. 54A]

### Return on Service of Writ

I hereby certify and return, that on the       day of 19       , I received this summons and served it together with the complaint herein as follows:

Received summons and complaint at Corpus Christi, Texas on March 3, 1965, and endeavored to execute on March 3, 1965, and again on April 12, 1965.

Unable to locate the within named Gladys Hart in Corpus Christi, Texas after diligent search through Post Office Dept., Doctor, Exchange, City Directory, and City Utilities. Writ returned unexecuted for the above reasons.

Travel—\$ 0.00

M. M. Hale, U. S. Marshal, Southern District of Texas, By: Hetton E. Schorre, Deputy U. S. Marshal.

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[fol. 55]

[Stamp—U. S. District Court, District of Oregon—Filed  
Apr 13 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

[Stamp—U. S. Marshal—West. Dist. of Wash.—Jan 26  
1965—AH—Seattle, Washington]

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,  
vs.

ELLIS D. CLARK, KENNETH GLASGOW, THERON NAUTA, ALICE  
ATTNEAVE, JAMES BRIGGS, GLADYS BUSHYHEAD, HENRY  
CAREY, MAXINE CAREY, MARY SHISEFSKI, LILLIAN G.  
FISHER, MILDRED FORRESTER, CLEO FOSTER, GAIL R. GREGG,  
GLADYS HART, GARY L. HENRY, HELEN C. HOHENSINNER,  
EDWARD HOLLENBECK, RICHARD E. A. JAMES, MARY ANN  
JONES, BARBARA MCGALLIAND, MARIA MARTIN, THOMAS  
MERRICK, ZOLA MOYDEN, MARY POOLEY, DORIS ROGERS,  
ALLAN SCHMIDT, BURL SIMINGTON, MAGGHELTSE SMIT,  
EVA SMITH, HARRY SMITH, JENNIFER SIBBIT, KATHERINE  
TASHIRE, RONALD N. TATE, LUCILLE WESTOVER, RICHARD  
L. WALTON, JOHN DOE WILSON, DONALD WOOD, JOHNATHON  
ZIADY, GREYHOUND LINES, INC., Defendants.

SUMMONS

To the following named Defendants: Maxine Carey,  
Helen C. Hohensinner, Mary Ann Jones, Mary Pooley,  
Richard L. Walton, Mary Shisefski, Edward Hollenbeck,  
Maria Martin, Doris Rogers.

You are hereby summoned and required to appear and  
defend this action and to serve upon Williams, Skopil &

Miller; A. J. Laue plaintiff's attorneys, whose address is 4th Floor, Pioneer Trust Bldg., Salem, Oregon an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Keith Burns, Clerk of Court, E. Nowell, Deputy Clerk.

[Seal of the Court]

Date: January 25, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 55A]

### Return on Service of Writ

I hereby certify and return, that on the 26th day of January 1965, I received this summons and served it together with Action in Interpleader and Order to Show Cause with Motion for Order to Show Cause on the therein-named Edward Hollenbeck by handing to and leaving a true and correct copy thereof with him personally at 912 "M" Street at Renton, Washington in the said District at 10:30 a.m., on the 28th day of January, 1965.

Donald F. Miller, United States Marshal, By Donald W. Fisher, Deputy United States Marshal.

### Marshal's Fees

Travel .....	\$15.60
Fwd fee .....	2.00
Service .....	6.00

---

23.60

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.



60

[fol. 56]

Form No. 100-100  
Edition 4-25-51

**RETURN ON SERVICE OF WRIT** Court No. 65-30  
Portland Ore

**United States of America,**  
**Western** DISTRICT OF **Washington**

vs: **State Farm Fire and Casualty Co.**  
vs  
**Ellis D. Clark and et al**

I hereby certify and return that I served the annexed Summons with Action in Interpleader  
and Order to Show Cause with Motion for Order to Show Cause, on the therein-named Maxine Carey

(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with her

(Individual or agent of company, corporation, etc.)

personally at 2nd Ave. N.W.

(Address—Street number, apartment number,

rooming house, etc.)

at Snoqualmie, Washington

(City)

(State)

in the said District

at 1:25 noon—p. m., on the 27th day of January, 19 65

Marshal's fees \$6.00

Fwd fee 2.00

Mileage \_\_\_\_\_

**DONALD F. MILLER**

*United States Marshal*

By Donald W. Fisher  
Donald W. Fisher

*Deputy*

[fol. 57]

Form No. URM 222  
Edition 4-22-45

## RETURN ON SERVICE OF WRIT

Cause #65-30

STATE FARM FIRE AND CASUALTY COMPANY

United States of America,

Western District of Washington

vs.

ELLIS D. CLARK, et al.,

I hereby certify and return that I served the annexed Summons and Action in Interpleader  
 on the therein-named Helen C. Hohensinner (writ/Order to Show Cause)  
 (Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with Mary Alice Hohensinner,  
 her sister  
 (Individual or agent of company, corporation, etc.)

personally at 1316 North Washington

(Address—Street number, apartment number,

rural route, etc.)

at Tacoma Washington in the said District  
 (City) (State)  
 at 2:00 PM p. m., on the 2nd day of February, 1965

Marshal's fees \$6.00  
 Fwd. fee \$2.00  
 Mileage \$ .96

DONALD F. MILLER

United States Marshal

By Joseph L. Mesheke,

Deputy.

62

[fol. 58]

Form No. 104 (Rev. 5-22-64)

# RETURN ON SERVICE OF WRIT Court No. 65-30 Portland Ore

United States of America,  
Western DISTRICT OF Washington

ss: State Farm Fire and Casualty Co.  
vs  
Ellis D. Clark and et al

I hereby certify and return that I served the annexed Summons with Action in Interpleader  
and Order to Show Cause with Motion for Order to Show Cause (in)  
on the therein-named Mary Ann Jones

(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with Mary Ann Jones whose  
present married name is Mary Ann Pankow

(Individual or agent of company, corporation, etc.)

personally at 2422 N.W. 59th

(Address—Street number, apartment number,  
rural route, etc.)

at Seattle, Washington

(City)

(State)

in the said District

at 4:00 xxm—p. m., on the 27th day of January, 1965

Marshal's fees \$6.00

Fwd fee 2.00

Mileage \_\_\_\_\_

DONALD F. MILLER

United States Marshal

By

Donald W. Fisher

Deputy.

[fol. 59]

Form No. URM 222  
Edition 4-22-45

## RETURN ON SERVICE OF WRIT

Cause #65-30

United States of America,

STATE FARM FIRE AND CASUALTY COMPANY

Western DISTRICT OF Washington

vs:

VS

ELLIS D. CLARK, et al.,

I hereby certify and return that I served the annexed Summons and Action in Interpleader &  
 on the therein-named Mary Pooley (Writ)/Order to Show Cause

(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with her

(Individual or agent of company, corporation, etc.)

personally at 818 South Anderson

(Address—Street number, apartment number,  
rural route, etc.)

at Tacoma Washington in the said District  
(City) (State)  
 at 1:45 a.m. p. m., on the 2nd day of February, 1965

Marshal's fees \$6.00  
 Fwd. fee \$2.00  
 Mileage \_\_\_\_\_

DONALD E. MILLER

United States Marshal.

By

Joseph L. Meshke,

Deputy.

U. S. GOVERNMENT PRINTING OFFICE 16-17777-2



[fol. 60]

Form No. 104 2-55  
Revised 1-25-55

## RETURN ON SERVICE OF WRIT Cause #65-30

United States of America,

STATE FARM FIRE AND CASUALTY COMPANY

Western District of Washington

vs  
ELLIS D. CLARK, et al.,

I hereby certify and return that I served the annexed Summons and Action in Interpleader and  
on the therein-named Richard L. Walton (Writ) Order to Show Cause  
 (Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with Ray Williams, son-in-law  
 (Individual or agent of company, corporation, etc.)

personally at 1736 South Cushman  
 (Address—Street number, apartment number,  
 rural route, etc.)

at Tacoma Washington in the said District  
 (City) (State)  
 at 2:20 pm—p. m., on the 2nd day of February, 19 65

Marshal's fees \$6.00  
 Fwd. fee \$2.00  
 Mileage \_\_\_\_\_

DONALD F. MILLER  
 United States Marshal

By Joseph L. Mesheke  
 Joseph L. Mesheke, Deputy.

[fol. 61]

Form No. 108, 2-55  
Edition 4-23-64

## RETURN ON SERVICE OF WRIT

Cause #65-30

STATE FARM FIRE AND CASUALTY COMPANY

United States of America,

vs

Western District of Washington

ss:

ELIS D. CLARK, et al.,

I hereby certify and return that I served the annexed Summons and Action in Interpleader and  
Order to Show Cause  
 on the therein-named Mary Chisefski  
 (Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with Albin Chisefski,  
her son  
 (Individual or agent of company, corporation, etc.)

personally at their residence at Box 492  
 (Address—Street number, apartment number,  
 rural route, etc.)

at Milton Washington in the said District  
 (City) (State)  
 at 3:20 PM—p. m., on the 28th day of January, 1965

Marshal's fees \$6.00

Mileage \$1.92

Fwd. fee \$2.00

DONALD F. MILLER

United States Marshal

By Joseph L. Meshke

Joseph L. Meshke,

Deputy.

U. S. GOVERNMENT PRINTING OFFICE 16-57777-2

66

[fol. 62]

Form No. USM 288  
Edition 4-23-54

**RETURN ON SERVICE OF WRIT** Court No. 65-30  
Portland Ore

United States of America,  
Western DISTRICT OF Washington

ss: State Farm Fire and Casualty Co.  
vs  
Ellis D. Clark and et al

I hereby certify and return that I served the annexed Summons with Action in Interpleader  
and Order to Show Cause with Motion for Order to Show Cause (with)  
on the therein-named Doris Rogers

(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with Doris Rogers whose  
true and correct name is Doris Rogers

(Individual or agent of company, corporation, etc.)

personally at 1015 3rd Ave.

(Address—Street number, apartment number,

rural route, etc.)

at Seattle, Washington

(City)

in the said District

(State)

at 11:30 a. m. ~~XXXX~~, on the 27th

day of January

, 1965

Marshal's fees \$6.00

Fwd fee 2.00

Mileage \_\_\_\_\_

DONALD F. MILLER

United States Marshal

By Donald W. Fisher

Donald W. Fisher

Deputy

U.S. GOVERNMENT PRINTING OFFICE: 1953 O-572718

[fol. 63]

Form No. URM 223  
Edition 4-23-55

## RETURN ON SERVICE OF WRIT

Cause #65-30

United States of America,

Western DISTRICT OF Washington

STATE FARM FIRE AND CASUALTY COMPANY

vs.

ELLIS D. CLARK, et al.,

I hereby certify and return that I served the annexed Summons & Action in Interpleader & Order to Show Cause  
 of the therein-named Maria Martin  
 (Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with her  
 (Individual or agent of company, corporation, etc.)

personally at 311 South 9th  
 (Address—Street number, apartment number,  
 rural route, etc.)

at Tacoma Washington in the said District  
 (City) (State)  
 at 1:30 PM p. m., on the 2nd day of February, 19 65

Marshal's fees \$6.00

Fwd. fee \$2.00

Mileage

DONALD F. MILLER

United States Marshal

By

Joseph L. Meshke, Deputy.



[fol. 64]

[Stamp—U. S. District Court, District of Oregon—Apr 13  
1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

vs.

ELLIS D. CLARK, KENNETH GLASGOW, THERON NAUTA, ALICE  
ATTNEAVE, JAMES BRIGGS, GLADYS BUSHYHEAD, HENRY  
CAREY, MAXINE CAREY, MARY SHISEFSKI, LILLIAN G.  
FISHER, MILDRED FORRESTER, CLEO FOSTER, GAIL R.  
GREGG, GLADYS HART, GARY L. HENRY, HELEN C. HOHEN-  
SINNER, EDWARD HOLLENBECK, RICHARD E. A. JAMES,  
MARY ANN JONES, BARBARA MCGALLIAND, MARIA MARTIN,  
THOMAS MERRICK, ZOLA MOYDEN, MARY POOLEY, DORIS  
ROGERS, ALLAN SCHMIDT, BURL SIMINGTON, MAGGSCHELTSE  
SMIT, EVA SMITH, HARRY SMITH, JENNIFER SIBBIT,  
KATHERINE TASHIRE, RONALD N. TATE, LUCILLE WEST-  
OVER, RICHARD L. WALTON, JOHN DOE WILSON, DONALD  
WOOD, JOHNATHON ZIADY, GREYHOUND LINES, INC.,  
Defendants.

SUMMONS

To the following named Defendant: Gary L. Henry.

You are hereby summoned and required to appear and  
defend this action and to serve upon Williams, Skopil &  
Miller; Al J. Laue plaintiff's attorneys, whose address  
is 4th Floor, Pioneer Trust Building, Salem, Oregon an  
answer to the complaint which is herewith served upon  
you, within twenty days after service of this summons upon  
you, exclusive of the day of service. If you fail to do so,

judgment by default will be taken against you for the relief demanded in the complaint.

Keith Burns, Clerk of Court, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: January 25, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 64A]

### Return on Service of Writ

I hereby certify and return, that on the 5th day of February 1965, I received this summons and served it together with the complaint herein as follows:

By handing a copy of the summons together with a copy of the Action in interpleader, Order and Order to show cause, to Gary L. Henry personally at his residence at 670 W. 10th Avenue Eugene, Oregon on February 5, 1965 at 5:25 PM.

Eugene G. Hulett, United States Marshal, By Allan D. Lindley, Chief Deputy United States Marshal.

### Marshal's Fees

Travel .....	\$26.40
Service .....	6.00
	<hr/>
	32.40

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol. 65]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Civil Case No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

—VS—

ELLIS D. CLARK, GREYHOUND LINES INC., ET AL., Defendants.

UNITED STATES MARSHAL'S ENDEAVOR OF SERVICE OR SUM-  
MONS, ACTION IN INTERPLEADER, EXHIBIT, ORDER AND  
ORDER TO SHOW CAUSE

Received the within and attached Summons, Action In Interpleader, Exhibit, Order and Order to show cause, on the 1st day of February, 1965, at Rapid City, South Dakota, and, after due and diligent search and inquiry, I was unable to locate the with-in named *Gary L. Henry*, within the District of South Dakota. I have been reliably informed by Dorothy Henry, sister of Gary L. Henry, of 2011 Jennings Street, Hot Springs, South Dakota, that the said Gary L. Henry has moved to *670 West 10th Street, Eugene, Oregon.*

and is reported to be enrolled in a trade school in Eugene, Oregon.

I therefore return this writ Not Served or Executed.

Dated at Rapid City, South Dakota, this 3rd of February, 1965.

Leonard T. Heckathorn, United States Marshal, Dis-  
trict of South Dakota, By Donald H. Herman,  
Deputy.

Marshal's Fees

Mileage on Endeavor	
(116 Mi.) to serve .....	\$13.92
Forwarding Fee .....	\$ 1.00

[fol. 66]

[Stamp—U. S. District Court—District of Oregon—Filed  
Feb 18 1965—Keith Burns, Clerk—By H. Jorgensen, Dep-  
uty]

**SUMMONS WITH LETTER ATTACHED**

C. J. Ziady  
276 32nd Ave.  
San Francisco, 21  
Feb. 16, 1965

Presiding Judge  
United States District Court  
District of Oregon  
Salem, Oregon

His Honour, The Presiding Judge:

This is to acknowledge receipt of "The Summons in a  
Civil Action;" *Civil Action File No. 65-30*, State Farm  
Fire and Casualty Company, Plaintiff, vs. *Jonathan Ziady*,  
my son, a student at the University of Oregon.

My wife received this "Summons" in my son's absence.  
He was attending the University when the "Summons" was  
delivered.

Respectfully yours,

/s/ C. J. ZIADY  
16-Feb-1965



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Civil Action File No. 65-30

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STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,  
vs.

ELLIS D. CLARK, KENNETH GLASGOW, THERON NAUTA, ALICE  
ATTNEAVE, JAMES BRIGGS, GLADYS BUSHYHEAD, HENRY  
CAREY, MAXINE CAREY, MARY SHISEFSKI, LILLIAN G.  
FISHER, MILDRED FORRESTER, CLEO FOSTER, GAIL R.  
GREGG, GLADYS HART, GARY L. HENRY, HELEN C. HOHEN-  
SINNER, EDWARD HOLLENBECK, RICHARD E. A. JAMES,  
MARY ANN JONES, BARBARA MCGALLIAND, MARIA MARTIN,  
THOMAS MERRICK, ZOLA MOYDEN, MARY POOLEY, DORIS  
ROGERS, ALLAN SCHMIDT, BURL SIMINGTON, AAGGCHELTS  
SMIT, EVA SMITH, HARRY SMITH, JENNIFER SIBBIT,  
KATHERINE TASHIRE, RONALD N. TATE, LUCILLE WEST-  
OVER, RICHARD L. WALTON, JOHN DOE WILSON, DONALD  
WOOD, JOHNATHON ZAIDY, GREYHOUND LINES, INC.,  
Defendants.

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SUMMONS

To the following above named Defendants: James  
Briggs, Mildred Forrester, Gladys Hart, Jennifer Sibbit,  
Johnathan Zaidy, Gladys Bushyhead, Cleo Foster, Allan  
Schmidt, Donald Wood.

You are hereby summoned and required to appear and  
defend this action and to serve upon Williams, Skopil &  
Miller; Al J. Lane plaintiff's attorneys, whose address  
is 4th Floor, Pioneer Trust Building, Salem, Oregon an  
answer to the complaint which is herewith served upon  
you, within twenty days after service of this summons  
upon you, exclusive of the day of service. If you fail to

do so, judgment by default will be taken against you for the relief demanded in the complaint.

Keith Burns, Clerk of Court, \_\_\_\_\_,  
Deputy Clerk.

[Seal of Court]

Date: January 25, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 68]

[Stamp—U. S. District Court, District of Oregon—Filed Feb 12 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

SUMMONSES WITH ~~ENVELOPE~~ MARKED "UNCLAIMED,"  
RETURN CARDS AND RECEIPTS ATTACHED

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

vs.

ELLIS D. CLARK, KENNETH GLASGOW, THERON NAUTA, ALICE ATTNEAVE, JAMES BRIGGS, GLADYS BUSHYHEAD, HENRY CAREY, MAXINE CAREY, MARY SHISEFSKI, LILLIAN G. FISHER, MILDRED FORRESTER, CLEO FOSTER, GAIL R. GREGG, GLADYS HART, GARY L. HENRY, HELEN C. HOHEN-SINNER, EDWARD HOLLENBECK, RICHARD E. A. JAMES, MARY ANN JONES, BARBARA MCGALLIAND, MARIA MARTIN, THOMAS MERRICK, ZOLA MOYDEN, MARY POOLEY, DORIS ROGERS, ALLAN SCHMIDT, BURL SIMINGTON, MAGGCHELTSE SMIT, EVA SMITH, HARRY SMITH, JENNIFER SIBBIT, KATHERINE TASHIRE, RONALD N. TATE, LUCILLE WEST-OVER, RICHARD L. WALTON, JOHN DOE WILSON, DONALD WOOD, JOHNATHON ZIADY, GREYHOUND LINES, INC., Defendants.

To the following named Defendants: Lucille Westover, Lillian G. Fisher, Richard E. A. James, Thomas Merrick, Eva Smith, Ronald N. Tate, John Doe Wilson, Gail R. Gregg, Barbara McGalliand, Maggcheltse Smit, Harry Smith.

You are hereby summoned and required to appear and defend this action and to serve upon Williams, Skopil & Miller; Al J. Laue plaintiff's attorneys, whose address is 4th Floor, Pioneer Trust Building, Salem, Oregon, United States of America an answer to the complaint which is herewith served upon you, within thirty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Keith Burns, Clerk of Court, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: January 27, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT  
OFFICE OF THE CLERK  
PORTLAND 7, OREGON  
OFFICIAL BUSINESS

[Redacted]

RETURN  
TO

[fol. 69]

POSTAGE & FEES PAID 75  
UNITED STATES COURTS  
PENALTY FOR PRIVATE USE TO AVOID  
PAYMENT OF POSTAGE, \$300

69

*Handwritten:*  
not for return -  
according to customs  
K. 15 June

MR. JOHN DOE WILSON  
5614 LARCH STREET  
VANCOUVER, B. C.  
CANADA

REGISTERED  
NO. 108761  
RETURN RECEIPT REQUESTED



[Redacted]

FEB 2

Avis de Reception



REGISTERED NO. 108752

Value \$ 7.00 Spec. del. fee 1.00  
 Post. receipt fee 1.00  
 Rec. duty fee 1.00  
 Airmail ☐

Postage 1.00



From: MS. Quat. Clerk  
 Office of Clerk - City  
 To: Mr. Maggchehras Smir  
 13911 122nd Ave.  
 Edmonton, Alta. Canada  
 POD Form 3805 - Oct. 1960

Registered article, (1)  
 Envoi recommandé  
 Parcel insured for  
 Colis avec valeur déclarée de \$  
 Mailed at the post office of  
 Dépôt au bureau de poste de  
 on JAN 27 1965 at Portland, Ore.  
 under No. 108752  
 Address of the  
 Adresse du  
 Maggchehras Smir  
 (Name or firm)  
 13911 122nd Avenue  
 (Street and number)  
 Edmonton, Alberta  
 (Place of destination)  
 Canada  
 (Country of destination)

The undersigned declares that the article mentioned above was duly delivered  
 Le soussigné déclare que l'envoi mentionné ci-dessus a été dûment livré  
 on 19 65  
 Signature of the agent of the office of destination  
 Signature de l'agent de destination  
 R. W. Colman  
 1965  
 I Cross out what does not apply. **Biffer ce qui ne convient pas.**  
 Indiquer dans la parenthèse la nature de l'envoi (lettre, carte postale, imprimé, etc.).  
 This receipt must be signed by the addressee or by a person authorized to do so by regulations of the country of destination, or, if those regulations so provide, by the agent of the office of destination, and returned by the first mail directly to the sender. **Ce avis doit être signé par le destinataire ou par une personne autorisée en vertu des règlements du pays de destination, ou, si ces règlements le comportent, par l'agent du bureau de destination, et renvoyé par le premier courrier directement à l'expéditeur.**

POST OFFICE DEPARTMENT  
 UNITED STATES OF AMERICA  
 Administration des Postes des  
 États-Unis d'Amérique

POSTAL SERVICE  
 Service des postes

RETURN TO:  
 Renvoyez à:

Clerk, U. S. District Court  
 (Name or firm)  
 United States Courthouse  
 (Street and number)  
 at Portland, Ore 97207  
 (City and State)  
 UNITED STATES OF AMERICA  
 États-Unis d'Amérique

RETURN RECEIPT  
 Avis de réception

If this receipt is to be returned by air mail, put on it the conspicuous notation "Retour par avion" (Return by air mail) in the blue "Par avion" (via air mail) label or impression.  
 Si le présent avis doit être renvoyé par avion, le réceptif de la mention très apparente "Retour par avion" et de l'inscription "Par avion" doit être apposé sur l'avis.  
 To be filled out by the sender, who will indicate his address for the return of this receipt.  
 À remplir par l'expéditeur, qui indiquera son adresse pour le renvoi de présent avis.

POD Form 3805, Jan. 1960

Civ. 65-30

108753

REGISTERED NO.

Value \$ 7.75 Reg. duty fee \$Fee \$ 7.75 Ret. receipt fee \$ 7.75Surcharges \$ 7.75 Ret. duty fee \$Postage \$ 7.75 ☐ AirmailPostmaster, by [Signature]Front 108753

To Harry Smith  
6907 Jubilee St.  
Vancouver, B.C.  
Canada

POD Form 380—Oct. 1960

**Registered article, (a)**  
**Envoi recommandé**

**Parcel insured for**  
 Cette avec valeur déclarée de \$ 108753

**Mailed at the post office of**  
 Dépôt au bureau de poste de Portland, Ore.

**on le** JAN 27 1965 **under No.** 108753  
 sous le No.

**Address of the**  
 Adresse du destinataire  
Harry Smith (Name or firm) (Nom ou raison sociale)  
6907 Jubilee Street (Street and number) (Rue et numéro)  
Vancouver, B. C. (Place of destination) (Lieu de destination)  
Canada (Country of destination) (Pays de destination)

The undersigned declares that the article mentioned above was duly delivered  
 Le soussigné déclare que l'envoi mentionné ci-dessus a été dûment livré

**Signature of the addresser:**  
 Signature de l'agent de l'envoi  
E. Smith January 29 1965  
R. J. Ried / 583794

Cross out what does not apply. **Rifler ce qui ne convient pas.**  
 Indiquer dans la parenthèse la nature de l'article (lettre, carte postale, imprimé, etc.) s'il y a lieu.  
 This receipt must be signed by the addressee or by a person authorized to do so by virtue of the regulations of the country of destination, or, if those regulations so provide, by the agent of the office of destination, and returned by the first mail directly to the sender. Cet avis doit être signé par le destinataire ou par une personne y autorisée en vertu des règlements du pays de destination, ou, si ces règlements le permettent, par l'agent du bureau des avaries, et renvoyé par le premier courrier directement à l'expéditeur.

☆ GPO:196-339184

**POST OFFICE DEPARTMENT**  
**UNITED STATES OF AMERICA**  
**Administration des Postes des**  
**Etats-Unis d'Amérique**

**POSTAL SERVICE**  
 Service des postes

**RETURN TO:**  
 Renvoyer à

**Clerk, U. S. District Court**  
 (Name or firm) (Nom ou raison sociale)  
**United States Courthouse, P. O. Box 1150**  
 (Street and number) (Rue et numéro)  
**at (1) Portland, Ore 97207** **UNITED STATES OF AMERICA**  
 (City and State) (Localité) Etats-Unis d'Amérique

**RETURN RECEIPT**  
 Avis de réception

**Postmark of the office**  
 returning the receipt  
 Timbre du bureau renvoyant l'avis

If this receipt is to be returned by air mail, put on it the conspicuous notation "Renval par avion" (Return by mail) and the blue "Par avion" (via air mail) label or impression.  
 Si l'avis doit être renvoyé par avion, le posséder de la mentionnée appropriée "Renval par avion" et de l'étiquette bleue "Par avion".  
 To be filled out by the sender, who will indicate his address for the return of this receipt.  
 À remplir par l'expéditeur, qui indiquera son adresse pour le renvoi de cet avis.

© Form 380, Jan. 1959

CIV 65-30

[fol. 71]

71

77



REGISTERED NO. 108754



Value \$ 2.00 Spec. del'y fee \$

Post. receipt fee \$ 0.00

Surcharge \$ 0.00 Post. del'y fee \$

Postage \$ 0.00 ☐ Airmail

From Barbara McGalliard

108754

12664 24th Street

White Rock, B.C. (Canada)

FD-36 (Rev. 1-1-64)

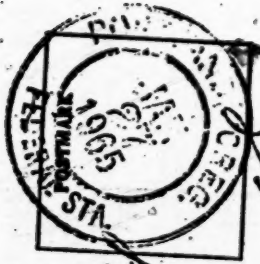
Registered article, <sup>(1)</sup>  
Envol recommandé  
Parcel insured for  
Celle avec valeur déclarée de \$  
Mailed at the post office of  
Déposé au bureau de poste de  
on JAN 27 1965 19 under No. 108754  
Barbara McGalliard  
(Name or firm)  
12664 24th Street  
(Street and number)  
White Rock, B. C.  
(Place of destination)  
Canada  
(Country of destination)

The undersigned declares that the article mentioned above was duly delivered  
Le soussigné déclare que l'envoi mentionné ci-dessus a été dûment livré  
on 27 JAN 1965 19 under No. 108754  
Signature of the agent of the office of destination  
Signature de l'agent du bureau destinataire  
Signature of the agent of the office of destination  
Signature de l'agent du bureau destinataire

Cross out what does not apply. Biffer ce qui ne convient pas.  
Indicate in the parentheses the nature of the article (letter, post card, print, etc.), if called for.  
Indiquer dans la parenthèse la nature de l'envoi (lettre, carte postale, imprimé, etc.) s'il y a lieu.  
This receipt must be signed by the addressee or by a person authorized to do so by virtue of the regulations  
of the country of destination, or, if those regulations so provide, by the agent of the office of destination, and  
returned by the first mail directly to the sender. Ce reçu doit être signé par le destinataire ou par une personne y  
autorisée en vertu des règlements du pays de destination, ou, si ces règlements le comportent, par l'agent du bureau des-  
tinataire, et renvoyé par le premier courrier directement à l'expéditeur.  
\* GPO: 1959-535154

POST OFFICE DEPARTMENT  
UNITED STATES OF AMERICA  
Administration des Postes des  
Etats-Unis d'Amérique  
POSTAL SERVICE  
Service des postes  
RETURN TO:  
Renvoyer à:  
Clerk, U.S. District Court  
(Name or firm)  
United States Courthouse, P. O. Box 1150  
(Street and number)  
Portland, Ore 97207  
(City and State)  
UNITED STATES OF AMERICA  
Etats-Unis d'Amérique  
If this receipt is to be returned by air mail, put on it the conspicuous notation "Recevoir par avion" (Return by  
air mail) and the blue "air mail" (via air mail) label or imprinting.  
Si le présent reçu doit être renvoyé par avion, le revêtir de la mention très apparente "Recevoir par avion" et de l'indication  
d'envoi par avion de couleur bleue "Par avion".  
To be filled out by the sender, who will indicate his address for the return of this receipt.  
A remplir par l'expéditeur, qui indiquera son adresse pour le retour de présent reçu.  
FD Form 3848, Jan. 1959  
CIV. 65-30

REGISTERED NO. 108755



Value \$ 7.75 Spec. del'y fee \$  
For \$ 7.75 Ret. receipt fee \$  
Surcharges \$ 7.75 Ret. del'y fee \$  
Postage \$ 7.75 ☐ Airmail

From Lucille Westover Postmaster, By JP  
2105 75th  
To Lucille Westover  
11319 111A Ave  
Edmonton Alta  
Canada  
POD Form 380—Oct. 1930

(To be filled out by the office of origin)  
(A remplir par le bureau d'origine)

Registered article, ☐  
Envoi recommandé

Parcel insured for \$  
Colis avec valeur déclarée de \$

Mailed at the post office of Portland, Ore.  
Déposé au bureau de poste de

on May 21 1935 19 under No. 108755  
le 21 sous le No.

Address of the addressee  
Adresse du destinataire  
Lucille Westover  
(Name or firm)  
11319 111A Avenue, Edmonton  
(Street and number)  
Edmonton, Alberta  
(Place of destination)  
Canada  
(Country of destination)

The undersigned declares that the article mentioned above was duly delivered  
Le soussigné déclare que l'envoi mentionné ci-dessus a été dûment livré

Signature of the agent of the office of destination  
Signature de l'agent du bureau destinataire  
Rev. C. L. ...

Postmark of the office of destination  
Timbre du bureau destinataire  
PORTLAND ORE MAY 21 1935

Cross out what does not apply. Riffer ce qui ne convient pas.  
Indiquer dans la parenthèse la nature de l'article (lettre, post card, printed matter, etc.)  
This receipt must be signed by the addressee or by a person authorized to do so by the agent of the regulations  
of the country of destination, or, if these regulations so provide, by the agent of the office of destination, and  
returned by the first mail directly to the sender. Cet avis doit être signé par le destinataire ou par une personne y  
autorisée en vertu des règlements du pays de destination, ou, si ces règlements le comportent, par l'agent du bureau des  
régulations, et renvoyé par le premier courrier directement à l'expéditeur.

POST OFFICE DEPARTMENT  
UNITED STATES OF AMERICA  
Administration des Postes des  
Etats-Unis d'Amérique

POSTAL SERVICE  
Service des postes

RETURN TO:  
Renvoyez à:

Postmark of the office  
receiving this receipt  
Timbre du bureau  
recevant l'avis

RETURN RECEIPT  
Avis de réception

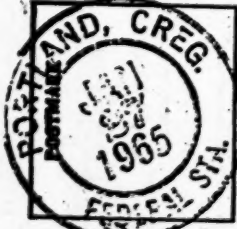
Clerk's Office, U. S. District Court  
(Name or firm)  
United States Courthouse, P. O. Box 1150  
(Street and number)  
at Portland, Ore. 97207 UNITED STATES OF AMERICA  
(City and State) (Localité) Etats-Unis d'Amérique

© Form 3805, Jan. 1939

If this receipt is to be returned by air mail, put on it the conspicuous notation "Retour par avion" (Return by  
air) and the blue "Par avion" (via air mail) label or impression.  
Si ce présent avis doit être renvoyé par avion, le porteur de la mention très apparente "Retour par avion" et de l'inscription  
bleue imprimée de couleur bleue "Par avion".  
To be filled out by the sender, who will indicate his address for the return of this receipt.  
A remplir par l'expéditeur, qui indiquera son adresse pour le renvoi de présent avis.



REGISTERED NO. 108756



Value \$ 7.74 Spec. del'y fee \$  
Fee \$ 7.74 Ret. receipt fee \$ 7.74  
Surcharges \$ 7.74 Ret. del'y fee \$  
Postage \$ 7.74 ☐ Airmail

Postmaster, By 92

From Lawrence A. Fisher  
103 752  
William G. Fisher  
Rt. 1-2556 West 4th Ave  
Vancouver, B.C.  
Canada  
POB Form 386—Oct. 1960

(To be filled out by the office of origin)  
(A remplir par le bureau d'origine)

Registered article, (C)  
Exposé recommandé

Parcel insured for  
Colis assuré contre avaries de \$

Mailed at the post office of  
Déposé au bureau de poste de

JAN 27 1965 19 under No. 108756  
108756

Lillian G. Fisher  
(Name or firm)  
(Nom ou raison sociale)

Route 1, 2556 West 4th Avenue  
(Street and number)  
(Rue et numéro)

Vancouver, B.C.  
(Place of destination)  
(Lieu de destination)

Canada  
(Country of destination)  
(Pays de destination)

The undersigned declares that the article mentioned above was duly delivered  
Le soussigné déclare que l'objet mentionné ci-dessus a été dûment livré

Signature of the addressee  
Signature du destinataire

Signature of the agent of the office of destination  
Signature de l'agent du bureau de destination

Cross out what does not apply. Rayer ce qui ne convient pas.  
Indiquer dans la parenthèse la nature de l'article (lettre, postcard, print, etc.) if called for.  
Indiquer dans la parenthèse la nature de l'envoi (lettre, carte postale, imprimé, etc.) s'il y a lieu.  
This receipt must be signed by the addressee or by a person authorized to do so by virtue of the regulations of the country of destination, or, if those regulations so provide, by the agent of the office of destination, and returned by the first mail directly to the sender. Ce récépissé doit être signé par le destinataire ou par une personne y autorisée en vertu des règlements du pays de destination, ou, si ces règlements le permettent, par l'agent du bureau de destination, et renvoyé par le premier courrier directement à l'expéditeur.

POST OFFICE DEPARTMENT  
UNITED STATES OF AMERICA  
Administration des Postes des  
Etats-Unis d'Amérique

POSTAL SERVICE  
Service des postes

RETURN TO:  
Renvoyer à:

Clerk's Office, U. S. District Court  
(Name or firm)  
(Nom ou raison sociale)

United States Courthouse, P. O. Box 1150  
(Street and number)  
(Rue et numéro)

at Portland, Ore. 97207  
(City and State)  
(Lieu)

UNITED STATES OF AMERICA  
Etats-Unis d'Amérique

If this receipt is to be returned by air mail, put on it the appropriate notation "Retour par avion" (Return by airmail) and the words "Par avion" (via air mail) label or impression.  
Si le présent récépissé doit être renvoyé par avion, le croquer de la mention appropriée "Retour par avion" et de l'impression "Par avion" (via air mail).  
This receipt must be filled out by the sender, who will indicate his address for the return of this receipt.  
Ce récépissé doit être rempli par l'expéditeur, qui indiquera son adresse pour le renvoi de présent récépissé.

Form 3866, Jan. 1959

CIV. 65-30

[fol. 74]

74





108758

REGISTERED NO.



Value \$  
 Fee \$  
 Surcharges \$  
 Postage \$  
☐ Airmail

Postmaster, By  
 From James Earl Ray  
108758  
Thomas J. Matthews  
315 C. Raymond Rd  
Seattle, B.C. Canada  
 FOD Form 3804—Oct. 1960

Registered article, ☐ Parcel insured for  
 Colis avec valeur déclarée de \$  
 Mailed at the post office of  
 Dépôt au bureau de poste de  
 at Portland, Ore 108758  
 on Jan 27 1965 under No. 108758  
 sous le No.  
 Address of the  
 Adresse de  
 destinataire  
Mr. Thomas Merrick  
3150 Frumme Road  
Vancouver, B. C.  
 (Name or firm)  
 (Street and number)  
 (Place of destination)  
 (Ligne de destination)  
Canada  
 (Nom ou raison sociale)  
 (Rue et numéro)  
 (Pays de destination)  
 Postmark of the office  
 of destination  
 Timbre du bureau  
 destinataire

The undersigned declares that the article mentioned above was duly delivered  
 Le soussigné déclare que l'envoi mentionné ci-dessus a été dûment livré  
 Signature of the agent of the office of destination  
 Signature de l'agent du bureau destinataire  
 Signature of the addressee  
 Signature du destinataire  
 Cross out what does not apply. 1965  
 Indiquer dans la parenthèse la nature de l'article (lettre, carte postale, imprimé, etc.) s'il y a lieu.  
 This receipt must be signed by the addressee or by a person authorized to do so by virtue of the regulations  
 returned by the first mail directly to the sender. Ce avis doit être signé par le destinataire ou par une personne  
 autorisée en vertu des règlements du pays de destination, ou, si ce règlement le comporte, par l'agent du bureau des  
 signatures, et renvoyé par le premier courrier directement à l'expéditeur.

POST OFFICE DEPARTMENT  
 UNITED STATES OF AMERICA  
 Administration des Postes des  
 États-Unis d'Amérique

POSTAL SERVICE  
 Service des postes

RETURN TO:  
 Renvoyez à:

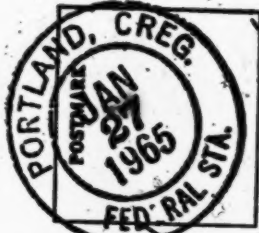
Clerk, U. S. District Court  
 (Name or firm)  
 United States Courthouse, P. O. Box 1150  
 (Street and number)  
 at Portland, Ore 97207  
 (City and state)  
 UNITED STATES OF AMERICA  
 États-Unis d'Amérique

RETURN RECEIPT  
 Avis de réception

This receipt is to be returned by air mail, put on it the conspicuous notation "Retour par avion" (Return by  
 air mail) and the blue "P.R. av" (via air mail) label or impression.  
 Ce récépissé doit être renvoyé par avion, le renvoyer de la mention éble apposée "Retour par avion" et de l'étiquette  
 bleue "P.R. av".  
 To be filled out by the sender, who will indicate his address for the return of this receipt.  
 À compléter par l'expéditeur, qui indiquera son adresse pour le renvoi de présent avis.

FD Form 3804, Jan. 1959

CIV. 65-30



8759

REGISTERED NO.

Value \$ 7.75 Spec. del'y fee \$

Fee \$ 7.75 Ret. receipt fee \$ 7.75

Surcharge \$ 7.75 Ret. del'y fee \$

Postage \$ 7.75 ☐ Airmail

Postmaster, By

From James A. Smith  
To Eva Smith  
6907 Jubilee Street  
Vancouver, B. C.  
FOD Form 3885—Oct. 1960

648-16-70483-4

Registered article, *Article recommandé*  
Parcel insured for *Colis avec valeur déclarée de \$*  
Mailed at the post office of *Déposé au bureau de poste de*  
on JAN 21 1965 at Portland, Ore. under No. 108759  
le Eva Smith (Name or firm) (Nom ou raison sociale)  
Address of the *Adresse du destinataire*  
6907 Jubilee Street (Street and number)  
Vancouver, B. C. (City and State)  
(Lieu de destination) (Pays de destination)

The undersigned declares that the article mentioned above was duly delivered  
Le soussigné déclare que l'envoi mentionné ci-dessus a été dûment livré  
on le January 19 1965  
Signature of the addressee *Signature de l'agent de la destination*  
E. Smith R. F. Reid / 50229  
Signature of the agent of the office of destination *Signature de l'agent du bureau destinataire*  
Cross out what does not apply. *Effacer ce qui ne convient pas.*  
Indicate in the parenthesis the nature of the article (letter, post card, print, etc.), if called for.  
Indiquer dans la parenthèse la nature de l'envoi (lettre, carte postale, imprimé, etc.), s'il y a lieu.  
This receipt must be signed by the addressee or by a person authorized to do so by virtue of the regulations  
of the country of destination, or, if those regulations so provide, by the agent of the office of destination, and  
returned by the first mail directly to the sender. Ce avis doit être signé par le destinataire ou par une personne y  
autorisée en vertu des règlements du pays de destination, et, si ces règlements le comportent, par l'agent du bureau des  
destinataires, et renvoyé par le premier courrier directement à l'expéditeur.

POST OFFICE DEPARTMENT  
UNITED STATES OF AMERICA  
Administration des Postes des  
Etats-Unis d'Amérique

POSTAL SERVICE  
Service des postes

RETURN TO:  
Renvoyer à:

Clerk, U. S. District Court

(Name or firm) (Nom ou raison sociale)

United States Courthouse, P. O. Box 1150

(Street and number) (Rue et numéro)

at Portland, Ore 97207 UNITED STATES OF AMERICA

(City and State) (Localité) (Etats-Unis d'Amérique)

If this receipt is to be returned by air mail, put on it the conspicuous notation "Retenir par avion" (Return by  
mail) and the blue "Par avion" (Via air mail) label or impression.  
If the sender wishes to have the receipt returned by air mail, the receipt must be marked "Retenir par avion" and the following  
notation must be written on the receipt: "Retenir par avion".  
If the sender wishes to have the receipt returned by air mail, the receipt must be marked "Retenir par avion" and the following  
notation must be written on the receipt: "Retenir par avion".

Form 3885, Jan. 1959

CIV. 65-30

[fol. 77]

77

83



[fol. 78]

84

82

REGISTERED NO. 108760

Value \$ 2.40 Sec. del'y fee \$ 0.00  
Fed. receipt fee \$ 0.00  
Surcharge \$ 0.00 Ret. del'y fee \$ 0.00  
Postage \$ 0.00 ☐ Airmail

Postmaster, By *AS*

From *Amesbury*  
*210 S. 257*  
*Amesbury, N. H.*  
*257*  
*Amesbury, N. H.*  
*257*

POD Form 384—Oct. 1960

[illegible]

**POST OFFICE DEPARTMENT**  
**UNITED STATES OF AMERICA**  
*Administration des Postes des*  
*Etats-Unis d'Amérique*

**POSTAL SERVICE**  
*Service des postes*

**RETURN TO:**  
*Renvoyez à:*

**RETURN RECEIPT**  
*Acte de réception*

**CLERK, U. S. DISTRICT COURT**  
*(Name or firm)*

**United States Courthouse, P. O. Box 1150**  
*(Street and number)*

**at Portland, Ore 97207**  
*(City and State)*

**UNITED STATES OF AMERICA**  
*Etats-Unis d'Amérique*

**Postmark of the office returning the receipt**  
*Timbre du bureau renvoyant l'avis*

1 If this receipt is to be returned by air mail, print on it the conspicuous notation "Renvoyé par avion" (Return by mail) and the blue "Par avion" (via air mail) label or inscription.  
2 To be returned only *directement par avion*, le récépissé de la notation très apparente "Renvoyé par avion" et de l'inscription "Par avion".  
3 To be filled out by the sender, who will indicate his address for the return of this receipt.  
4 To be filled out by the addressee, who indicates an address for the return of the original mail.

**19<sup>th</sup> Term 2008, Jan. 1959**

Civ. 65-30

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**PAGE**

108761

REGISTERED NO. \_\_\_\_\_

Value \$ \_\_\_\_\_

Spec. del'y fee \$ \_\_\_\_\_

Fee \$ 7.74

Ret. receipt fee \$ 7.74

Secured \$ \_\_\_\_\_

Rest. del'y fee \$ \_\_\_\_\_

Postage \$ 7.74 ☐ Airmail

Postmaster, By J.S.

From 108761-2

To John Doe Wilson

156111

Washington D.C.

Postmaster

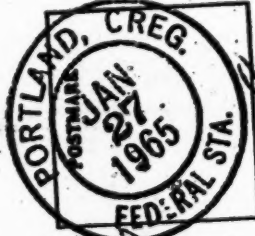
FD-7 Form 200—Oct. 1960

448-10-70455-4

PORTLAND, OREG.  
JAN 1965  
RAIL STA.

John Doe Wilson envelope  
containing summons returned  
marked "unclaimed"  
(See envelope marked "page 69")

REGISTERED NO. 108762



Value \$ 7.25 Spec. del'y fee \$ 0.00  
Fee \$ 0.00 Ret. receipt fee \$ 0.00  
Surcharge \$ 0.00 Ret. del'y fee \$ 0.00  
Postage \$ 7.25 ☐ Airmail

Postmaster, B. J. S.  
From James A. J. Gregg  
918 752  
918 752  
Edmonton, Alberta, Canada  
- Oct. 1960

**Registered article, (To be filled out by the office of origin)**  
Parcel insured for 108762  
Mailed at the post office of Portland, Ore.  
Deposited on 27 JAN 27 1965 under No. 108762  
on 27 19 65 under No. 108762  
Address of the Gail R. Gregg (Name of addressee)  
Address du 9852 87th Avenue (Street and number)  
destinataire Edmonton, Alberta (City and State)  
Canada (Country of destination)  
(Ligne de destination)  
Postmark of the office of destination EDMONTON ALTA CANADA 11 1965

**The undersigned declares that the article mentioned above was duly delivered**  
**Le soussigné déclare que l'objet mentionné ci-dessus a été dûment livré**  
on le 27 19 65  
Signature of the addressee: G. R. COLLUM  
Signature du destinataire: G. R. COLLUM  
Signature of the agent of the office of destination: G. R. COLLUM  
Signature de l'agent du bureau de destination: G. R. COLLUM

**Cross out what does not apply. Biffes of qui ne conviennent pas.**  
**Indiquer dans la parenthèse la nature de l'article (lettre, post card, print, etc.) if not a letter.**  
**Indiquer dans la parenthèse la nature de l'objet (lettre, carte postale, imprimé, etc.) si ce n'est pas une lettre.**  
**This receipt must be signed by the addressee or by a person authorized to do so by virtue of the regulations of the country of destination, or, if those regulations so provide, by the agent of the office of destination, and returned by the first mail directly to the sender. Ces avis doit être signé par le destinataire ou par une personne y autorisée en vertu des règlements du pays de destination, ou, si ces règlements le comportent par l'agent de bureau de destination, et renvoyé par le premier courrier directement à l'expéditeur.**

**POST OFFICE DEPARTMENT**  
**UNITED STATES OF AMERICA**  
**Administration des Postes des États-Unis d'Amérique**

**POSTAL SERVICE**  
**Service des postes**

**RETURN TO:**  
**Renvoyez à:**

**RETURN RECEIPT**  
**Avis de réception**

**Postmark of the office returning the receipt**  
**Timbre de bureau renvoyant l'avis**  
EDMONTON ALTA CANADA 11 1965

**Clerk, U. S. District Court**  
(Name or firm) (Nom ou raison sociale)  
**United States Courthouse, P. O. Box 1150**  
(Street and number) (Rue et numéro)  
**at (A) Portland, Ore 97207** UNITED STATES OF AMERICA  
(City and State) (Localité) États-Unis d'Amérique

**1 If this receipt is to be returned by air mail, put on it the conspicuous notation "Retour par avion" (Return by airmail) and the blue "Par avion" (via air mail) label or impression.**  
**1 Si ce présent avis doit être renvoyé par avion, le papier de la mention très apparente "Retour par avion" et de l'étiquette ou impression de couleur bleue "Par avion" doit être apposé sur l'avis.**  
**2 To be filled out by the sender, who will indicate his address for the return of this receipt.**  
**2 Remplir par l'expéditeur, qui indiquera son adresse pour le retour de cet avis.**

© Form 2885, Jan. 1959 **Civ. 65-30**



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**PAGE**

[fol. 81]

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF OREGON  
 [Title omitted]

MOTION BY DEFENDANT NAUTA TO DISMISS  
 Filed February 11, 1965

The defendant Nauta moves the court as follows:

1. To dismiss the action as to him on the ground it appears from the complaint that the court lacks jurisdiction because:

a. The sum in controversy between plaintiff and this defendant, or between any two or more defendants, could not exceed \$10,000.00, exclusive of interest and costs.

b. This is an action in personam arising in California and one or more parties said by the complaint to be indispensable to interpleader cannot be served with summons within Oregon, namely each defendant designated in the complaint as a nonresident of Oregon.

2. To dismiss the action as to him, because the complaint fails to state a claim against him upon which relief can be granted, and affirmatively shows plaintiff can have no relief against him because it shows:

a. He has no present claim against plaintiff.

[fol. 82] b. No defendant has a liquidated claim against either insured of plaintiff.

3. To dismiss the action on the ground that the complaint fails to state a claim upon which relief can be granted.

4. To dismiss as to this defendant so much of the complaint as is contained in:

[File endorsement omitted]

- a. That portion of paragraph 1. of the prayer asking a declaration that plaintiff's insurance policy does not cover the accident described in the complaint.
- b. That portion of paragraphs 2. and 3. of the prayer asking for an order of interpleader.
- c. Paragraph 5. of the prayer asking for an injunction against institution or prosecution of any litigation, because the complaint shows:
  - (1) The court lacks jurisdiction of the subject matter;
  - (2) That interpleader, if allowed, would not dispose of plaintiff's problems and provide it the relief it seeks;
  - (3) Plaintiff has not exhausted its remedies at law;
  - (4) Plaintiff seeks to evade its contractual duty to defend its insureds; and
  - (5) Plaintiff seeks at its will to subject the rights of this defendant to one set of laws rather than another, to limit plaintiff's right of recovery against its insureds, and to extend the remedy of interpleader beyond protection of a stakeholder.

Hugh B. Collins, Attorney for defendant Nauta,  
107 East Main Street, Medford, Oregon.

#### Memorandum of Points and Authorities

The motion is made under Rule 12 (b) and 12 (d) of the Federal Rules of Civil Procedure.

[fol. 83] 1. Where plaintiff does not relinquish its claim to the fund, the interpleader statutes (28 USC 1335, 1397, and 2361) do not apply.

See *Sanders v. Armour Fertilizer Works*, 292 US 190, 91 ALB 950.

2. An action under Rule 22 (1) in the nature of interpleader is like any other diversity action.

*National Casualty Co. v. Insurance Co. of North America*, 280 F Supp 617.

- a. The sum in controversy must exceed \$10,000.00 exclusive of interest and costs.

*National Casualty Co. v. Insurance Co. of North America*, 230 F Supp 617.

- (1) Applying also the general rule, it is submitted that where plaintiff's policy contains a single-claim limit of \$10,000.00 it cannot aggregate separate claims of several defendants to make the amount in controversy exceed the jurisdictional minimum.

*Elliott v. Empire Natural Gas Co.*, 4 F.2d 493.

*Smith v. Columbia County, Oregon*, 166 F Supp 140.

- b. Summons may be served only within the territorial limits of the state.

*Metropolitan Life Insurance Co. v. Chase*, 294 F 2d 500.

- c. The law of Oregon, including its law of conflicts, is applicable and must be applied.

*Aurora Gasoline Co. v. Coyle*, 174 F Supp 331.

- (1) The interpleading party cannot at will subject the contesting claimants to one set of laws rather than another.

*Sanders v. Armour Fertilizer Works*, 292 US 190, 91 ALR 950.

3. Interpleader will not lie where the proceeding will [fol. 84] not terminate plaintiff's liability to all parties.

*Smith v. Mosier*, 169 Fed 430.

*cf New York Life Insurance Co. v. Lee*, 232 F 2d 811 (CA 9-Ore).



4. Interpleader will not lie until the claims against the insured have been liquidated and hence each defendant has a right of action against the insurer.

*Klaber v. Maryland Casualty Co.*, 69 F 2d 934, 106 ALR 617.

*National Casualty Co. v. Insurance Co. of North America*, 230 F Supp 617.

a. This is not the rule where under applicable law:

(1) Exhaustion of the indemnity limit relieves the insurer of the obligation to further defend its insured.

*Denham v. LaSalle-Maddison Hotel Co.*, 168 F 2d 576.

(2) A statute permits joinder of the insurer as a defendant in the original action against the insured; the so-called "direct action" statutes.

*Pan-American Fire & Casualty Co. v. Revere*, 188 F Supp 474.

5. Something besides double vexation must appear from the complaint; it must be shown that the plaintiff is exposed to double or multiple liability, not merely exposed to a multiplicity of suits.

See *Banker's Life Co. v. Doering*, 54 F Supp 302, aff'd 105 F 2d 578.

6. Jurisdiction to enjoin litigation in state courts in aid of actions in the nature of interpleader under Rule 22 (1) has been questioned by text writers, but no decision in point has been found.

Moore's Manual, Federal Practice & Procedure (1964 ed) 966 § 14.06 (1).

3 Moore's Federal Practice 3010 § 22.04 (2), 3044 § 22.13 (2).

[fol. 85]

- a. To be distinguished from statutory interpleader; e.g.

*Pan-American Fire & Casualty Co. v. Revere*, 188 F Supp 474.

7. Even where there may be jurisdiction to discharge the plaintiff of further liability and to determine the rights of the claimants in the fund, there is no jurisdiction to enter separate judgments as between the claimants.

*Consolidated Underwriters of South Carolina Insurance Co. v. Bradshaw*, 136 F Supp 395.

#### Summary of Argument

1. The court lacks jurisdiction over the subject matter because:

a. This is a diversity case and the sum in controversy between plaintiff and any defendant, particularly this defendant, could not exceed \$10,000.00 exclusive of interest and costs.

b. Since plaintiff does not relinquish the fund, this is not an action in rem and jurisdiction cannot be gained over any defendants outside Oregon, thus the action will not discharge the possible liability upon which plaintiff bases the action.

c. No claim against either of plaintiff's insureds has been liquidated and hence no defendant has any present claim against plaintiff, except plaintiff's insureds who at best have no present right to indemnity, but only a right to be defended.

2. It is quite likely that the court lacks jurisdiction to enjoin litigation in state courts, and seems well established that the court lacks jurisdiction to render adjudications as between claimants, if any, to the fund.

3. For the reasons given in paragraph 1, supra, the complaint does not state a claim in the nature of interpleader because:

a. Interpleader, if allowed, would not dispose of plaintiff's problems and provide it with the relief it seeks.

[fol. 86] b. Plaintiff has not exhausted its remedies at law, namely, declaratory judgment actions in proper forums;

c. Plaintiff seeks to evade its contractual duty to defend its insureds, which is neither equitable conduct nor the function of interpleader.

4. The complaint cannot survive as one for declaratory judgment against any defendant except one of plaintiff's insureds because:

a. If plaintiff were held bound by the contract, no one such claim could exceed \$10,000.00 exclusive of interest and costs, and thus is subject to the jurisdictional minimum limitation; and

b. As against any defendant outside Oregon, service of summons could not be accomplished.

#### The Agreement to Defend

It appears most important to plaintiff to be relieved of its insuring agreement to defend. It therefore seeks either a declaratory judgment that the insurance is not applicable, or in the alternative seeks to pay its policy limit into court and have the court declare that this amounts to "exhaustion of the indemnify agreement" and that the agreement to defend is dependent so that it ceases when the indemnity limit is thus "exhausted".

Three alternatives present themselves: (1) to hold that an insurer may abandon its insured by tendering the limit of its indemnity (as plaintiff seeks here), or (2) to hold that the insurer is absolved from further defense, after

applying its policy limit in settlements or in satisfaction of judgments, but the duty to defend continues until this contingency occurs, or (3) to hold that the agreement to defend is independent and continues whether or not the indemnity limit is exhausted.

Each alternative finds case support: (1) *Pan American Fire & Casualty Co. v. Revere*, 188 F Supp 474; (2) *Mead* [fol. 87] *Corporation v. Liberty Mutual Ins. Co.*, 219 Ga. 6, 131 SE 2d 534, reversing 107 Ga App 167, 129 SE 2d 162 which held with alternative 3; *General Casualty Co. of Wisconsin v. Whipple*, 328 F 2d 353; *Travelers Indemnity Co. v. New England Box Co.*, 102 N.H. 380, 157 A 2d 765; (3) *American Employers Insurance Co. v. Goble Aircraft Specialties, Inc.*, 205 Misc 1066, 131 NYS 2d 393; *American Casualty Co. of Reading, Pa. v. Howard*, 187 F 2d 322; *Anchor Casualty Co. v. McCaleb*, 178 F 2d 322; *National Casualty Co. v. Ins. Co. of North America*, 230 F Supp 617. (stating alternative 3 is generally adopted). The foregoing enumeration purports to be only representative, not exhaustive.

The United States District Court would follow the Oregon rule; however no Oregon case in point has been found. An attempt was then made to determine the Oregon conflicts rule, but without success. Thought was given whether the Oregon court would consider Restatement of Conflicts §§ 355, 358, 370, and 372, and hold that where a contract was performable in several places, the law of the place where the right to performance arose would be applied. Consideration was also given to the possibility that the Oregon court might see fit to apply the "grouping of contracts" theory, as lately applied in New York to contract cases generally (e.g. *Auten v. Auten*, 308 NY 155, 124 NE 2d 99, 50 ALR 2d 246) in which the proper law to be applied is said to be the law of the place which has the most significant contacts with the matter in dispute.

Without attempting to say what the Oregon court would hold, an arbitrary assumption was made that it would



apply California law. An attempt to determine the California rule as to the agreement to defend revealed the following situation: *Comunale v. Traders & General*, 321 P2d 768, 773 said:

"The agreement to defend is not only completely independent of and severable from the indemnity provisions of the policy, but is completely different."

[fol. 88] However the California Supreme Court in the same case, 328 P2d 198, vacated the District Court of Appeals opinion and said of the controversy (at page 201):

"The decisive factor . . . is not the refusal to defend; it is the refusal to accept an offer of settlement within the policy limits."

The Supreme Court reached the same result as did the District Court of Appeals, but for a different reason. Thus we have a definite statement by the Intermediate Appellate Court which is disapproved as not being in point, but is not repudiated as incorrect in the abstract. It is suggested that by failing to repudiate the statement, the Supreme Court gave it the force of dictum, and it is persuasive authority if California law is to be applied; cf. *Shanks v. Travelers Insurance Co.*, 25 F Supp 740.

[fol. 89] Affidavit of Service (omitted in printing).

[fol. 90]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Civil No. 65-30

[Title omitted]

MOTIONS AND OBJECTION TO ISSUANCE OF TEMPORARY  
RESTRAINING ORDER—Filed February 12, 1965

Defendant Greyhound Lines, Inc., for itself alone, moves the Court for the following orders:

- (1) Setting aside and dissolving the order to show cause heretofore entered herein on January 22, 1965.
- (2) Dismissing the complaint and proceeding against it, all for the following grounds:

(a) The United States District Court for the District of Oregon is not the proper forum for the determination of this proceeding because:

(i) The accident which forms the subject matter of the complaint allegedly occurred in Shasta County, California, on September 19, 1964 between a pickup truck and a bus of this defendant; plaintiff is an Illinois corporation; this defendant is a California corporation; according to the allegations of the complaint [fol. 91] 10 parties to this proceeding are California residents, 9 Washington residents, 11 are British Columbia residents, one each from the States of South Dakota and Montana, 32 in all as against only 7 who reside in Oregon, and 4 lawsuits arising from the accident are pending in California.

(b) There can be no justiciable controversy between the plaintiff and this moving defendant because the policy as set forth and described in paragraph 13 of the

[File endorsement omitted]

complaint does not contain or provide for coverage for property damage which is the only claim at this time which this moving defendant could assert, i.e., a corporation cannot sustain personal injuries.

(c) It appears from the complaint that the Court lacks jurisdiction of the subject matter and of the parties.

(d) The action is one in personam arising in the State of California and one or more parties said by the complaint to be indispensable cannot be served with process within this district.

(e) The complaint fails to state a claim against Greyhound Lines, Inc. upon which relief can or should be granted. Apparently no defendant has a liquidated claim against any insured of plaintiff.

(f) The interpleader if allowed would not dispose of plaintiff's problems nor could it provide plaintiff with the relief it seeks.

(g) Plaintiff has not exhausted its remedies at law.

(h) Plaintiff seeks to evade its contractual duties to defend its insureds.

(i) Plaintiff wrongfully seeks at its will to subject the rights of one defendant against the other to wrongfully limit its right of recovery against its insureds and to wrongfully extend the remedy of interpleader beyond the protection of a stakeholder.

[fol. 92] Upon argument of this motion defendant Greyhound Lines, Inc. will rely upon the authorities from the memorandum of points and authorities submitted herein by defendant Nauta in support of his motion to dismiss.

Koerner, Young, McColloch & Dezendorf, John Gordon Gearin, Attorneys for Defendant, Greyhound Lines, Inc.

[fol. 93] Affidavit of Service (omitted in printing).

[fol. 116]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

March 15 1965

— Solomen, C.J. — East, J. xxx Kilkenney, J.  
Reporter J. Beckwith  
Deputy C. Mundorff

Civil No. 65-30

Cr. No. \_\_\_\_\_

Information \_\_\_\_\_ Indictment \_\_\_\_\_

Violation:

Section \_\_\_\_\_

Title \_\_\_\_\_

Deft Present \_\_\_\_\_ Not Present \_\_\_\_\_

Juvenile \_\_\_\_\_ Age \_\_\_\_\_

No. Counts \_\_\_\_\_ Arraigned \_\_\_\_\_

Plea: Guilty \_\_\_\_\_ Not Guilty \_\_\_\_\_

Trial: Court \_\_\_\_\_ Jury \_\_\_\_\_

Counsel: Appointed \_\_\_\_\_

Retained \_\_\_\_\_

STATE FARM FIRE & CASUALTY Co.,

vs.

ELLIS D. CLARK.

Pltfs Attys Williams:

Defts Attys Gearin: Levin: Skopel. Diese



BLOTTER ENTRY OF HEARING ON MOTION TO DISMISS, ETC.

Record of Hearing on Motion of Q. Collins to Dismiss

Order denying Motion to Dismiss

Record of hearing on Motion and Objections to Issuance of  
Temporary Restraining Order

Order that it is premature as time for service has not  
expired

Motion to Dismiss and Objection to Order to Show Cause  
withdrawn by Greyhound

Motion for permission of Greyhound to file Cross complaint  
and segregate issue of liability

Order allowing Motion to file cross complaint within 10  
days

Order setting for Call May 17th for Status report

[fol. 123]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil No. 65-30

[Title omitted]

ORDER TO SHOW CAUSE—March 25, 1965

To: State Farm Fire and Casualty Company, Ellis D. Clark, Kenneth Glasgow, Alice Attneave, James Briggs, Gladys Bushyhead, Henry Carey, Maxine Carey, Mary Shisefski, Lillian G. Fisher, Mildred Forrester, Cleo Foster, Gail R. Gregg, Gladys Hart, Gary L. Henry, Helen C. Hohensinner, Edward Hollenbeck, Richard E. A. James, Mary Ann Jones, Barbara McGalliand, Maria Martin, Thomas Merrick, Zola Moyden, Mary Pooley, Doris Rogers,

[File endorsement omitted]

Allan Schmidt, Burl Simington, Maggcheltse Smit, Eva Smith, Harry Smith, Jennifer Sibbit, Katherine Tashire, Ronald N. Tate, Lucille Westover, Richard L. Walton, John Doe Wilson, Donald Wood and Johnathon Ziady

You, and each of you, are hereby ordered within 45 days of service upon you of this order to appear and show cause in writing, if any there be, and serve the same upon Greyhound Lines, Inc. through its attorneys, Koerner, Young, McColloch & Dezendorf, 800 Pacific Building, Portland, Oregon 97204, why an order of this Court should not be entered temporarily restraining you, and each of you, from instituting or further prosecuting any suit or action against Greyhound Lines, Inc. or its employee, Theron Nauta, in [fol. 124] any State, Federal or Provincial Court as a result of or in any way connected with your respective claims for personal injury and/or wrongful death arising out of the accident of September 19, 1964, or why you should not be required to appear herein, present and litigate any claim or claims for personal injuries or wrongful death against Greyhound Lines, Inc. or its employee, Theron Nauta.

All of Which Is Considered, Ordered and Adjudged this 25 day of March, 1965.

John F. Kilkenny, Judge.

Presented by:

John Gordon Gearin, Of Attorneys for Defendant, Greyhound Lines, Inc.

[fol. 125]

## IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF OREGON

Civil No. 65-30

[Title omitted]

## MOTION FOR ORDER TO SHOW CAUSE—

Filed March 25, 1965

Greyhound Lines, Inc., one of defendants above named, moves the Court for an order requiring plaintiff and the co-defendants, and each of them, to appear and to show cause within 45 days of the date of service upon them why an injunction should not issue from this Court temporarily restraining the plaintiff and co-defendants, and each of them, from instituting or further prosecuting any suit or action against it or its employee, Theron Nauta, in any State, Federal or Provincial Court as a result of or in any way connected with their respective claims for personal injury and/or wrongful death arising out of the accident of September 19, 1964, or why they should not be required to appear herein, present and litigate any claim or claims for personal injuries or wrongful death against Greyhound Lines, Inc. or its employee, Theron Nauta.

In support of said motion Greyhound Lines, Inc. will rely on the complaint in plaintiff's Action in the Nature of In-[fol. 126] terpleader, Title 28 § 2361 USCA, the docket entry order of this Court dated March 15, 1965, and the cross-claims of co-defendants Hohensinner, Martin and Pooley.

Koerner, Young, McColloch & Dezendorf, John Gordon Gearin, Attorneys for Defendant Greyhound Lines, Inc.

[File endorsement omitted]

[fol. 127]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Civil No. 65-30

[Title omitted]

ANSWER, CROSS-CLAIMS FOR DECLARATORY RELIEF AND  
DEMAND FOR TRIAL BY JURY—Filed March 25, 1965

First Defense

Defendant Greyhound Lines, Inc., for itself alone and for no other defendant, for answer to plaintiff's complaint admits and denies as follows:

I.

Admits the allegations of paragraphs 1 through 13, inclusive.

II.

Denies paragraphs 14 to 15 for lack of sufficient information.

III.

Admits the allegations of paragraphs 16 through 22, inclusive.

IV.

Denies paragraphs 23 and 24 for lack of sufficient information.

V.

Admits paragraphs 25 to 26, inclusive.

[File endorsement omitted]



## I.

Defendant Greyhound Lines, Inc. is interested in the fund established by plaintiff's Action in the Nature of Interpleader to the extent of damage sustained to its bus in the collision referred to in the complaint in the approximate amount of \$75,000.00 and to the extent of its lien for benefits paid to its driver, Theron Nauta, in an amount to be determined.

## II.

Defendant Greyhound Lines, Inc. alleges that the policy of insurance referred to in paragraphs 13 and 14 of the complaint provides coverage to the operator and/or owner of the 1964 Dodge one-half ton pickup truck, i.e., defendants Ellis D. Clark and Kenneth Glasgow, and that plaintiff is required by the terms of said policy to pay for bodily injuries sustained by the occupants of defendant's bus according to the limits of said policy and for the further limits of \$5,000.00 property damage because of the legal liability of its assured, the driver or owner of said pickup truck.

By way of Cross-claim against Defendants Ellis D. Clark, Kenneth Glasgow, Alice Attneave, James Briggs, Gladys Bushyhead, Henry Carey, Maxine Carey, Mary Shisefski, Lillian G. Fisher, Mildred Forrester, Cleo Foster, Gail R. Gregg, Gladys Hart, Gary L. Henry, Helen C. Hohensinner, Edward Hollenbeck, Richard E. A. James, Mary Ann Jones, Barbara McGalliand, Maria Martin, Thomas Merrick, Zola Moyden, Mary Pooley, Doris Rogers, Allan Schmidt, Burl Simington, Maggcheltse Smit, Eva Smith, Harry Smith, Jennifer Sibbit, Katherine Tashire, Ronald N. Tate, Lucille Westover, Richard L. Walton, John Doe Wilson, Donald Wood and Johnathon Ziady, Defendant Greyhound Lines, Inc. alleges:

## I.

On or about the 19th day of September, 1964, at or near the hour of 3:10 A.M. a collision occurred on U. S. Highway [fol. 129] No. 99 at a point approximately 17 miles north of Redding, Shasta County, California, between a northbound bus No. 7779 owned and operated by defendant Greyhound Lines, Inc. through its employee, defendant Theron Nauta, and a southbound 1964 Dodge one-half ton pickup truck operated by Ellis D. Clark in which Kenneth Glasgow was riding. Greyhound Lines, Inc. is informed and believes that Kenneth Glasgow was the owner of said pickup truck which was being operated at said time and place on his behalf.

## II.

The following co-defendants were passengers on said bus and received injuries as a proximate result of said collision. They are: Alice Attneave, Henry Carey, Burl Simington and Katherine Tashire, residents and citizens of the State of Oregon; James Briggs, Gladys Bushyhead, Mildred Forrester, Cleo Foster, Gladys Hart, Allan Schmidt, Jennifer Sibbit, Donald Wood and Johnathon Ziady, residents and citizens of the State of California; Maxine Carey, Mary Shisefski, Helen C. Hohensinner, Edward Hollenbeck, Mary Ann Jones, Maria Martin, Mary Pooley and Doris Rodgers, residents and citizens of the State of Washington; Gary L. Henry, a resident and citizen of the State of South Dakota; Zola Moyden, a resident and citizen of the State of Montana; Lillian G. Fisher, Richard E. A. James, Barbara McGalliard, Thomas Merrick, Eva Smith, Harry Smith and Ronald N. Tate, residents and citizens of the Province of British Columbia; Gail R. Gregg, Maggcheltse Smit and Lucille Westover, residents and citizens of the Province of Alberta. Sue M. Walton lost her life as a result of said collision and Richard L. Walton, a citizen and resident of the State of Washington, is or may be beneficially interested as her husband in said death. Jean Wilson lost her life as a result of said collision and John Wilson, a citizen and resident of

the Province of British Columbia, Canada, is or may be beneficially interested as her husband in said death. Ellis D. Clark and Kenneth Glasgow, operator and occupant of said pickup truck, likewise received injuries in said accident.

[fol. 130]

### III.

The foregoing accident and the resulting injuries and deaths were caused solely and proximately by the negligence of Ellis D. Clark and/or Kenneth Glasgow in one or more of the following particulars:

- (1) They drove and operated said pickup truck on the wrong side of the road.
- (2) They failed to maintain proper control of said pickup truck.
- (3) They failed to maintain proper or any lookout.
- (4) They drove and operated the same at an excessive rate of speed.

### IV.

Neither Greyhound Lines, Inc. nor its driver, Theron Nauta, were guilty of negligence in any particular, and no act or omission on their part constituted a proximate or other cause of the collision or of the foregoing injuries and deaths.

### V.

Gladys Bushyhead, Donald E. Wood, Katherine Tashire, Eva Smith, Harry Smith, Barbara McGalliand, Gladys Hart and Mary Shisefski have filed actions for damages arising from injuries sustained in said accident against Greyhound Lines, Inc. and others in the Superior Courts of the State of California. Maxine Carey and her husband, William Carey, have filed similar actions in the Federal Court of the District of Washington. The aggregate amount of the prayers of said complaints exceeds the sum of \$1,000,000.00.

## VI.

Maria Martin, Mary Pooley and Helen C. Hohensinner have filed in this proceeding cross-claims for personal injuries against Greyhound Lines, Inc., the aggregate amount thereof totalling \$150,000.00.

## VII.

Numerous claims for damages have also been made [fol. 131] against this answering defendant and additional law actions are threatened. No case has as yet proceeded to trial.

## VIII.

Greyhound Lines, Inc. is a California corporation. The amount in controversy exceeds the sum of \$10,000.00, exclusive of interest and costs. The Court, upon the deposit by plaintiff, State Farm Fire and Casualty Company, of \$20,000.00 by reason of diversity of citizenship and the amount in controversy, has jurisdiction of the subject matter and of the plaintiff and of all defendants.

## IX.

Co-defendants, with the exception of defendant Theron Nauta, claim and Greyhound Lines, Inc. denies that Greyhound Lines, Inc. was legally responsible for said accident and for the resulting injuries and deaths. Greyhound Lines, Inc. is interested in a determination by way of Bill of Peace in the determination of its rights, status and lack of legal responsibility with respect to said accident, and it is necessary to avoid numerous expensive and vexatious litigation that Greyhound Lines, Inc. obtain a declaration of its rights, status and lack of legal responsibility for said accident.

## X.

There presently exists an actual justiciable controversy between plaintiff and co-defendants, all of whom have an



interest in the present controversy, and the rights of the parties should therefore be declared.

Wherefore, defendant Greyhound Lines, Inc. prays:

(1) That the Court adjudicate and decree that plaintiff's policy of insurance indemnifies and protects Ellis D. Clark and/or Kenneth Glasgow for bodily injury and property damage according to the limits thereof and that it be required to extend coverage to said Clark and Glasgow.

[fol.132] (2) That the fund deposited by plaintiff in the Registry of this Court be made available to or for the benefit of the defendants herein.

(3) That the Court adjudicate and decree that Greyhound Lines, Inc. was not legally responsible for the accident involved in this controversy or for the injuries or deaths resulting therefrom.

(4) That the Court further adjudicate and agree that the sole remedy of the injured parties or co-defendants or the survivors or beneficiaries thereof be against Ellis D. Clark and/or Kenneth Glasgow and the fund deposited by plaintiff in this Court.

(5) That the defendants and each of them be required to appear herein, present and litigate any claim or claims for personal injuries or wrongful death against Greyhound Lines, Inc. or its employee, Theron Nauta, or be forever barred.

(6) That the Court issue an injunction restraining all parties from instituting or further prosecuting any pending suits against Greyhound Lines, Inc. or Theron Nauta, whether State or Federal, other than in the instant proceeding.

(7) For such other further and separate relief as to the Court may seem just and equitable.

Koerner, Young, McColloch & Dezendorf, John Gordon Gearin, Attorneys for Defendant Greyhound Lines, Inc.

[fol. 143]

[Stamp—U. S. District Court, District of Oregon—Filed  
May 14, 1965—Keith Burns, Clerk, By H. Jorgensen,  
Deputy]

SUMMONSES AND RETURNS

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

vs.

ELLIS D. CLARK, KENNETH GLASGOW, THERON NAUTA, ALICE  
ATTNEAVE, JAMES BRIGGS, GLADYS BUSHYHEAD, HENRY  
CAREY, MAXINE CAREY, MARY SHISEFSKI, LILLIAN G.  
FISHER, MILDRED FORRESTER, CLEO FOSTER, GAIL R.  
GREGG, GLADYS HART, GARY L. HENRY, HELEN C. HOHEN-  
SINNER, EDWARD HOLLENBECK, RICHARD E. A. JAMES,  
MARY ANN JONES, BARBARA MCGALLIAND, MARIA MARTIN,  
THOMAS MERRICK, ZOLA MOYDEN, MARY POOLEY, DORIS  
ROGERS, ALLAN SCHMIDT, BURL SIMINGTON, MAGGHELTSE  
SMIT, EVA SMITH, HARRY SMITH, JENNIFER SIBBIT,  
KATHERINE TASHIRE, RONALD N. TATE, LUCILLE WEST-  
OVER, RICHARD L. WALTON, JOHN DOE WILSON, DONALD  
WOOD, JOHNATHON ZIADY, GREYHOUND LINES, INC.,  
Defendants.

To the following named Defendants: Ellis D. Clark, Ken-  
neth Glasgow, Theron Nauta and Greyhound Lines, Inc.

You are hereby summoned and required to appear and  
defend this action and to serve upon Geddes, Felker, Wal-  
ton & Richmond; James G. Richmond for defendant Mary  
Ann Jones whose true name is now Mary Ann Pankow  
attorneys, whose address is P. O. Box 1265, Roseburg,  
Oregon an answer to the answer and cross-claim which

is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the answer and cross-claim.

Keith Burns, Clerk of Court, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: April 14, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 143-A]

### Return on Service of Writ

I hereby certify and return, that on the 11th day of May 1965, I received this summons and served it together with the complaint herein as follows: by serving a copy of each on the C. T. Corp. System for the Greyhound Lines, Inc., at the office of the CT Corp. System on the 8th Floor of the Pacific Building at 520 S.W. Yamhill St., on the 11th day of May, 1965.

Eugene G. Hulett, United States Marshal, District of Oregon, By Clarence L. Dizney, Deputy United States Marshal.

### Marshal's Fees

Travel .....	\$ none
Service .....	3.00
	<hr/>
	\$ 3.00

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol. 144]

Form No. USM 222  
Edition 4-22-61

## RETURN ON SERVICE OF WRIT

United States of America,

DISTRICT OF

OREGON

ss:

I hereby certify and return that I served the annexed SUMMONSon the therein-named ELLIS D. CLARK, ET AL, (Writ)  
(Individual, company, corporation, etc.)by handing to and leaving a true and correct copy thereof with together with a true and  
correct copy of the ANSWER AND CROSS-COMPLAINT to MR. ELLIS D. CLARK,  
(Individual or agent of company, corporation, etc.)personally at his new home apartment at 3410 South Pacific Blvd., Apt. # 5,  
(Address—Street number, apartment number,  
rural route, etc.)at ALBANY, OREGON in the said District  
(City) (State)  
at 5:15 p. m., on the 14th day of MAY, 19 65Marshal's fees 3.00Mileage 16.80Cost this service \$19.80Eugene C. Rullett  
United States Marshal  
District of Oregon

By

By

CLARENCE L. DIXON Deputy  
DEPUTY U. S. MARSHAL

Court Civil No. 65-30

Oregon Marshal's Civil No. 7073



110

[fol. 145]

Form No. 104a  
Edition 4-22-35

# RETURN ON SERVICE OF WRIT

United States of America,

DISTRICT OF OREGON

ss:

## SUBPOENA

I hereby certify and return that I served the annexed SUBPOENA  
on the therein-named ELLIS D. CLARK, ET AL, (Write)  
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with together with a true and  
correct copy of the ANSWER AND CROSS-COMPLAINT to MR. KENNETH GLASGOW  
(Individual or agent of company, corporation, etc.)

personally at his home at 704 Shasta Street, (P.O. Box 31)  
(Address—Street number, apartment number,  
rural route, etc.)

at EAGLE POINT, OREGON in the said District  
(City) (State)

at 1:25 a/m, on the 13th day of MAY, 19 35

Marshal's fees 3.00

Mileage see return RE: NAUTA

Cost this service \$3.00

Eugene C. Hulett  
United States Marshal  
District of Oregon

By CLARENCE L. DIZNEY Deputy  
DEPUTY U. S. MARSHAL

Court Civil No. 65-30

Oregon Marshal's Civil No. 7073

[fol. 146]

Form No. 104B 200  
Revised 4-23-61

## RETURN ON SERVICE OF WRIT

United States of America,

DISTRICT OF OREGON

ss:

I hereby certify and return that I served the annexed SUMMONS  
 on the therein-named ELLIS D. CLARK, ET AL, (Wife)  
 (Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with together with a true and  
correct copy of the ANSWER AND CROSS-COMPLAINT to MR. THERON NAUTA  
 (Individual or agent of company, corporation, etc.)  
by serving his wife MRS. JUNE NAUTA

personally at their home ranch at Rural Route No. P.O. Box 52-K  
 (about 5 miles So. of Keno, Oregon)  
 (Address—Street number, apartment number,  
 rural route, etc.)

at KENO OREGON in the said District  
 (City) (State)  
 at 3:35 4/14—p. m., on the 13th day of MAY, 19 65

Marshal's fees 3.00Mileage 72.96Cost this service \$75.96

Eugene C. Rullett

United States Marshal  
District of Oregon

By

By

CLARENCE L. DIZNEY  
Deputy U. S. Marshal

Court Civil No. 65-30

Oregon Marshal's Civil No. 7073

[fol. 149]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil No. 65-30

[Title omitted]

RESTRAINING ORDER—Filed May 3, 1965

Heretofore, on the 22nd day of January, 1965, the Court entered its order, directed to each of the defendants, requiring them to appear and show cause in writing, if any there be, why an order of this court should not be entered temporarily restraining the defendants from instituting or prosecuting any proceedings in any state or United States court affecting the property or obligation involved in this interpleader action. The time to appear and show cause in writing has expired. The defendant Theron Nauta, on or about the 11th day of February, 1965, filed his motion to dismiss the plaintiff's complaint, and the defendant Greyhound Lines, Inc., having on or about the 11th day of February, 1965, filed its motions and objections to the issuance of the temporary restraining order, and the defendant Mary Chisefski and the defendant Hollenbeck, having on or about the 23rd day of February, 1965, filed their motions and objections to the issuance of the temporary [fol. 150] restraining order, and none of the remaining defendants having appeared and shown cause why such restraining order should not issue. The court having heretofore considered the motions and objections of the defendants Nauta, Greyhound Lines, Inc., Chisefski, and Hollenbeck and having heretofore overruled such motions and objections,

It Is Therefore Ordered, Adjudged and Decreed that the defendants, and each of them, except the defendant Gladys Hart, their officers, agents, servants, employees and attor-

[File endorsement omitted]

neys, and all other persons in active concert or participation with them, be and they are hereby temporarily restrained and enjoined from instituting or prosecuting any proceedings in any state or United States court affecting the property or obligation involved in this interpleader action, and specifically against instituting or prosecuting any proceeding against the plaintiff or any of the defendants who may constitute the plaintiff's assureds.

Dated this 3rd day of May, 1965.

John F. Kilkenny, District Judge.

[fol. 151]

[Stamp—U. S. District Court, District of Oregon—Filed Jul 8 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

SUMMONSES AND RETURNS

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

ELLIS D. CLARK, et al., Defendants.

To the following named Defendant: Ronald N. Tate.

You are hereby summoned and required to appear and defend this action and to serve upon Koerner, Young, McCulloch & Dezendorf; John Gordon Gearin attorneys, for Defendant Greyhound Lines, Inc. whose address is 800 Pacific Building, Portland, Oregon 97204 an answer to the



Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk of Court, E. Nowell Deputy Clerk.

[Seal of Court]

Date: May 12, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 151-A]

### Return on Service of Writ

I hereby certify and return, that on the 12th day of May 1965, I received this summons and served it together with the answer herein as follows: by mailing by registered mail under No. 564282 with return receipt requested, the summons, answer, Cross-Claims for Declaratory relief, Demand for Jury Trial & Order To Show Cause. Return Receipt indicated it was received by Ronald N. Tate in person on May 15, 1965.

Eugene G. Hulett, United States Marshal, By Allan D. Lindley, Chief Deputy United States Marshal.

### Marshal's Fees

Travel .....	\$.....
Service .....	6.00
	<hr/>
	\$ 6.00

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol. 152]

[Stamp—U. S. District Court, District of Oregon—Filed  
Jul 8 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

ELLIS D. CLARK, et al., Defendants.

SUMMONS

To the following named Defendant: Thomas Merrick.

You are hereby summoned and required to appear and defend this action and to serve upon Koerner, Young, McCulloch & Dezendorf; John Gordon Gearin & Associates, for Defendant Greyhound Lines, Inc. whose address is 800 Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk of Court, E. Nowell, Deputy  
Clerk.

[Seal of Court]

Date: May 12, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 152-A]

## Return on Service of Writ

I hereby certify and return, that on the 12th day of May 1965, I received this summons and served it together with the answer herein as follows: by mailing by registered mail under No. 564284 with return receipt requested the summons, Answer, Cross-Claims for Declaratory relief, Demand for Jury Trial & Order to Show Cause. Return receipt indicated it was received in person on May 17, 1965, by Thomas Merrick.

Eugene G. Hulett, United States Marshal, By Allan  
D. Lindley, Chief Deputy United States Marshal.

## Marshal's Fees

Travel .....	\$.....
Service .....	6.00
	<hr/>
	\$ 6.00

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol. 153]

[Stamp—U. S. District Court, District of Oregon—Filed  
Jul 8 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

ELLIS D. CLARK, et al., Defendants.

SUMMONS

To the following named Defendant: Lucille Westover.

You are hereby summoned and required to appear and defend this action and to serve upon Koerner, Young, McCulloch & Dezendorf; John Gordon Gearin attorneys, for Defendant Greyhound Lines, Inc. whose address is 800 Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk of Court, E. Nowell, Deputy  
Clerk.

[Seal of Court]

Date: May 12, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.



[fol. 153-A]

## Return on Service of Writ

I hereby certify and return, that on the 12th day of May 1965, I received this summons and served it together with the answer herein as follows: by mailing it by registered mail under No. 564283 with return receipt requested the summons, answer, Cross-claims for Declaratory relief, Demand for Jury Trial & Order to show cause. Return receipt indicated it was received May 15, 1965 in person, by Lucille Westover.

Eugene G. Hulett, United States Marshal, By Allan  
D. Lindley, Chief Deputy United States Marshal.

## Marshal's Fees

Travel .....	\$.....
Service .....	6.00
	<hr/>
	\$ 6.00

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol. 154]

[Stamp—U. S. District Court, District of Oregon—Filed  
Jul 8 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

• UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

• • ELLIS D. CLARK, et al., Defendants.

**SUMMONS**

To the following named Defendant: **Richard E. A. James.**

You are hereby summoned and required to appear and defend this action and to serve upon Koerner, Young, McCulloch & Dezendorf; John Gordon Gearin attorneys, for Defendant Greyhound Lines, Inc. whose address is 800 Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk of Court, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: May 12, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 154-A]

**Return on Service of Writ**

I hereby certify and return, that on the 12th day of May 1965, I received this summons and served it together with the answer herein as follows: By mailing a copy to Mr. Richard E. A. James by registered Mail with return receipt requested to 1045 Nelson, Vancouver, B.C. Canada under No. 564285 on May 13, 1965. Return receipt indicates letter was delivered on May 15, 1965 at said address. Summons was served along with Answer, Cross-Claims for Declaratory relief, Demand for Jury Trial, Order to Show Cause.

Eugene G. Hulett, United States Marshal, By Allan D. Lindley, Chief Deputy United States Marshal.

### Marshal's Fees

Travel .....	\$.....
Service .....	6.00
	<hr/>
	\$ 6.00

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol. 155]

[Stamp—U. S. District Court—District of Oregon—Filed Jul 8—1965—Keith Burns; Clerk—By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

ELLIS D. CLARK, et al., Defendants.

~~SUMMONS~~

To the following named Defendant: Maggcheltse Smit.

You are hereby summoned and required to appear and defend this action and to serve upon Koerner, Young, McCulloch & Dezendorf; John Gordon Gearin attorneys, for Defendant Greyhound Lines, Inc. whose address is 800 Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days after service of this summons upon you, exclusive of the

day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded, in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk of Court, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: May 12, 1965.

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 155-A]

### Return on Service of Writ

I hereby certify and return, that on the 12th. day of May 1965, I received this summons and served it together with the answer herein as follows: by mailing a copy of each by registered mail with return receipt requested to Maggcheltse Smit to 13911 122nd. Avenue Edmonton, Alberta, Canada under No. 564283 on May 13, 1965 and on May 15, 1965 said receipt was signed by Smit and returned by mail. The summons and complaint were accompanied by an answer, Cross-claims for Declaratory relief, Demand for Jury Trial and Order to show cause.

Eugene G. Hulett, United States Marshal, By Allan D. Lindley, Chief Deputy United States Marshal.

### Marshal's Fees

Travel .....	\$ .....
Service .....	6.00
	<hr/>
	6.00

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]



[fol. 156]

[Stamp—U. S. District Court—District of Oregon—Filed  
Jul 8—1965—Keith Burns, Clerk—By H. Jorgensen,  
Deputy]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

ELLIS D. CLARK, et al., Defendants.

SUMMONS

To the following named Defendant: Jean Wilson.

You are hereby summoned and required to appear and defend this action and to serve upon Koerner, Young, McCulloch & Dezendorf; John Gordon Gearin attorneys, for Defendant Greyhound Lines, Inc. whose address is 800 Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk of Court, By E. Nowell, Deputy Clerk.

[Seal of Court]

Date: May 12, 1965.

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 156-A]

## Return on Service of Writ

I hereby certify and return, that on the 12th. day of May 1965, I received this summons and returned it unexecuted as Jean Wilson is deceased.

Eugene G. Hulett, United States Marshal, By Allan D. Lindley, Chief Deputy United States Marshal.

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol. 157]

[Stamp—U. S. District Court—District of Oregon—Filed Jul 8—1965—Keith Burns, Clerk—By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

ELLIS D. CLARK, et al., Defendants.

## SUMMONS

To the following named Defendant: Gladys Hart.

You are hereby summoned and required to appear and defend this action and to serve upon Koerner, Young, McCulloch & Dezendorf; John Gordon Gearin attorneys for Defendant Greyhound Lines, Inc. whose address is 800 Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days.

after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk of Court, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: May 12, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 157-A]

### Return on Service of Writ

I hereby certify and return, that on the 29th day of May 1965, I received this summons at Monroe, Louisiana and on the 29th day of May, 1965 at 12:30 o'clock P.M. at Route 1, Box 41, Clay, Louisiana executed same by delivering a certified copy of this summons together with Cross-Claims for Declaratory Relief and Demand for Trial by Jury; Motion for Order to Show Cause and Order to Show Cause to the within named Gladys Hart, in person.

Joseph W. Keene, United States Marshal, By Russell L. Jordan, Deputy United States Marshal.

### Marshal's Fees

Travel .....	\$11.04
Service .....	6.00
	<hr/>
	17.04
Tl. Fee .....	2.00
	<hr/>
	\$19.04
Endeavors ....	1.68
	<hr/>
	\$20.72

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

### Marshal's Return

I received this writ at Shreveport, Louisiana on May 27, 1965 and on May 27, 1965 endeavored to serve the within named Gladys Hart at 3224 Midway, Shreveport, Louisiana, and was informed that she now resides at Rt. 2, Clay, Louisiana, in care of Mrs. Willie Carr. I therefore return this writ unexecuted and unserved, this the 27th day of May, 1965 at Shreveport, Louisiana.

Mileage \$.72

On Endeavor

Joseph W. Keene, U. S. Marshal, By: Delmer E. Anglin, Deputy.

[fol. 158]

### Report of Endeavor

Date—5/13/65 Marshal's Number 7073 Civil No.) 65-30

Case—State Farm Fire and Casualty Company vs. Ellis D. Clark et al.

Company or Person—Gladys Hart

Place Endeavored—1325—19th Ave., San Francisco, California

Reason Not Served—No such house number, also checked 1374—19th Ave., S. F. No one at that place either.

Writ Held for Further Action \_\_\_\_\_

(check)

Writ Returned—5/17/65

Travel—\$.96¢

Elliott K. Chan, Deputy.



[fol. 159]

[Stamp—U. S. District Court, District of Oregon—Filed  
Jul 8 1965—Keith Burns, Clerk; By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

ELLIS D. CLARK et al., Defendants.

SUMMONS

To the following named Defendant: Mildred Forrester.

You are hereby summoned and required to appear and defend this action and to serve upon Koerner, Young, McCulloch & Dezendorf; John Gordon Gearin for Defendant Greyhound Lines, Inc. whose address is 800 Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk, Clerk of Court, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: May 12, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 159-A]

Return on Service of Writ

I hereby certify and return, that on the 18th day of May, 1965, I received this summons and served it together with

the complaint herein as follows: Answer/Crossclaim/Demand for jury Trial/motion for Order/Order to show cause Served Mildred Forrester, personally, at 1930 Haste, Berkeley, Calif. on 5-18-65

Edward A. Heslep, United States Marshal, By  
Thomas P. McGowan, Deputy United States Marshal.

**Marshal's Fees**

Forwarding fee ....	\$2.00
Travel .....	\$
Service .....	6.00

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol. 160]

[Stamp—U. S. District Court, District of Oregon—Filed  
Jul 8 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

ELLIS D. CLARK et al., Defendants.

**SUMMONS**

To the following named Defendant: Gladys D. Bushyhead.

You are hereby summoned and required to appear and defend this action and to serve upon Koerner, Young, McCulloch & Dezendorf; John Gordon Gearin attorneys for

Defendant Greyhound Lines, Inc. whose address is 800 Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk, Clerk of Court, E. Nowell,  
Deputy Clerk.

[Seal of Court]

Date: May 12, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 160-A]

### Return on Service of Writ

I hereby certify and return, that on the 18th day of May 1965, I received this summons and served it together with the complaint herein as follows: Served Gladys D. Bushyhead, personally, at 1312 92nd Ave., Oakland, Calif. on 5-18-65, together with a copy of Answer, Cross Claim, Demand for Jury Trial, Motion for Order, and Order to Show Cause.

Edward A. Heslep, United States Marshal, By  
Thomas P. McGowan, Deputy United States Marshal.

### Marshal's Fees

Travel .....	\$8.88
Forwarding fee ....	2.00
Service .....	6.00

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol. 161]

[Stamp—U. S. District Court, District of Oregon—Filed  
Jul 8 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

ELLIS D. CLARK et al., Defendants.

SUMMONS

To the following named Defendant: Donald Wood.

You are hereby summoned and required to appear and defend this action and to serve upon Koerner, Young, McCulloch & Dezendorf; John Gordon Gearin attorneys for Defendant Greyhound Lines, Inc. whose address is 800 Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days after service of this summons upon you, exclusive of the day of Service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk, Clerk of Court, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: May 12, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 161-A]

Return on Service of Writ

I hereby certify and return, that on the 18th day of May 1965, I received this summons and served it together with



the complaint herein as follows: Answer/Crossclaim/Demand for Jury Trial/Motion for Order/Order to show cause Served Donald Wood by serving Linda J. Wood, Wife at 3100 Wheeler, Berkeley, Calif. on 5-18-65

Edward A. Heslep, United States Marshal, By  
Thomas P. McGowan, Deputy United States Marshal.

**Marshal's Fees**

Forwarding fee --- \$2.00  
Travel ..... \$  
Service ..... 6.00

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol. 162]

[Stamp—U. S. District Court, District of Oregon—Filed Jul 8 1965,—Keith Burns, Clerk, By H. Jorgensen, Deputy]

**UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF OREGON**

**Civil Action File No. 65-30**

**STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,**

**v.**

**ELLIS D. CLARK et al., Defendants.**

**SUMMONS**

To the following named Defendant: Cleo Foster.

You are hereby summoned and required to appear and defend this action and to serve upon attorneys for Defendant Greyhound Lines, Inc.: Koerner, Young, McCulloch & Dezen Dorf; John Gordon Gearin, whose address is: 800

Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk, Clerk of Court, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: May 12, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 162-A]

### Return on Service of Writ

I hereby certify and return, that on the 14th day of May 1965, I received this summons and served it together with the complaint herein as follows:.

Served Cleo Foster on June 9, 1965, at Apt 707, 1133 Laguna Street, San Francisco, California, by delivering a copy of the Summons, Answer, Cross Claim, Demand for Jury Trial, Motion for Order and Order to Show Cause, to her personally.

Edward A. Heslep, United States Marshal, By  
Frank Klein, Deputy United States Marshal.

Forwarding Fees: \$2.00

### Marshal's Fees

Travel .....	\$ .48
Service .....	6.00

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol. 163]

[Stamp—U. S. District Court, District of Oregon—Filed  
Jul 8 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

ELLIS D. CLARK et al., Defendants.

SUMMONS

To the following named Defendant: Allan Schmidt.

You are hereby summoned and required to appear and defend this action and to serve upon Koerner, Young, McCulloch & Dezendorf; John Gordon Gearin attorneys, for Defendant Greyhound Lines, Inc. whose address is 800 Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk of Court, E. Nowell, Deputy  
Clerk.

[Seal of Court]

Date: May 12, 1965

Note—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 163-A]

## Return on Service of Writ

I hereby certify and return, that on the 12th day of May 1965, I received this summons and served it together with the complaint herein as follows: And on June 16, 1965 I handed a copy of the Summons, Answer, Motion & Order to Allan Schmidt at 1505 Orchard Ave. (Apt. 28) Eugene, Oregon.

Eugene G. Hulett, United States Marshal, By Raymond O. Hume, Deputy United States Marshal.

## Marshal's Fees

Travel	220	\$26.40
Service		6.00

Total		\$32.40
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Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol. 164]

## Return of Non-Service of Writ

Civil. 65-30—Oregon

Office of United States Marshal,  
Northern District of California, ss.:

I hereby certify that I received the annexed summons, order to show cause motion for order to show cause and answer, cross-claims for declaratory relief and demands for trial by jury. On 5/19, 1965, and returned the same not served as to Allan Schmidt Address 43 Kinross, San Rafael, California on 5/19, 1965. Reason Allan Schmidt may be located at 1505 Orchard Ave. Apt. #28, Eugene, Ore. Also he is still enrolled at the U. of O. at Eugene, Ore.

Edward A. Heslep, United States Marshal, By Stanley W. Fogler, Deputy.

Expense \$ None.



[fol. 165]

[Stamp—U. S. District Court, District of Oregon—Filed  
Jul 8 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

ELLIS D. CLARK et al., Defendant.

SUMMONS

To the following named Defendant: Jennifer Sibbit

You are hereby summoned and required to appear and defend this action and to serve upon Koerner, Young, McCulloch & Dezendorf; John Gordon Gearin attorneys for Defendant Greyhound Lines, Inc. whose address is 800 Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk of Court, E. Nowell, Deputy  
Clerk.

[Seal of Court]

Date: May 12, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 165A]

## Return on Service of Writ

I hereby certify and return, that on the 13th day of May 1965, I received this summons and served it together with the complaint herein as follows: Summons and Complaint, was delivered to Jennifer Sibbitt in person at Eugene, Oregon on July 1, 1965, along with the summons & complaint she was served with an Order to show cause, motion for order to show cause and answer, cross-claims for declaratory relief and demands for trial by jury.

Eugene G. Hulett, United States Marshal, By .....  
 ....., Deputy United States Marshal.

## Marshal's Fees

Travel .....	\$27.36	(228 R.T.M.)
Service .....	6.00	
	<hr/>	
	33.36	

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol. 166]

## Return of Non-Service of Writ

Civil. 65-30 Oregon

Office of United States Marshal,  
 Northern District of California, ss.:

I hereby certify that I received the annexed summons, order to show cause, motion for order to show cause and answer, cross-claims for declaratory relief and demands for

trial by jury on 5/19, 1965, and returned the same not served as to Jennifer Sibbitt Address 81 Cambridge Heights, Novato, California on 5/19, 1965. Reason Jennifer Sibbitt may be located at 1841 Emerald St., Eugene, Oregon. Also she is still enrolled at the U. of O. at Eugene, Ore.

Edward A. Heslep, United States Marshal, By Stanley W. Fogler, Deputy.

Expense \$6.48

[fol. 167]

[Stamp—U. S. District Court, District of Oregon—Filed Jul 8- 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

ELLIS D. CLARK, et al., Defendants.

SUMMONS

To the following named Defendant: Alice Attneave.

You are hereby summoned and required to appear and defend this action and to serve upon attorneys for Defendant Greyhound Lines, Inc.: Koerner, Young, McColloch & Dezendorf: John Gordon Gearing, whose address is: 800 Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45

days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk of Court, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: May 12, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 167A]

### Return on Service of Writ

I hereby certify and return, that on the 12th day of May 1965, I received this summons and served it together with the Answer/Cross claim/Demand for jury trial/Motion & Order to show Cause herein as follows: and at 10:25 A.M. On May 15, 1965 I served the above described writs upon Alice (Mrs. Fred) Attneave, at Rte 4, Box 319-M, Eugene, Oregon, by handing her a copy of the above writs personally.

Her address is presently, Rte 4, Bx 319M (1st house south of Spencer Butte Park, on South Willamette St, Eugene, Oregon)

Eugene G. Hulett, United States Marshal, District of Oregon, By \_\_\_\_\_, Deputy United States Marshal.

### Marshal's Fees

Travel .....	\$ (Costs applied to Ziady service)
Service .....	6.00
	<hr/>
	\$ 6.00



Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol: 168]

[Stamp—U. S. District Court, District of Oregon—Filed Jul 8 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

ELLIS D. CLARK, et al., Defendants.

SUMMONS

To the following named Defendant: Kenneth Glasgow.

You are hereby summoned and required to appear and defend this action and to serve upon attorneys, for Defendant Greyhound Lines, Inc.: Koerner, Young, McCulloch & Dezendorf; John Gordon Gearin, whose address is: 800 Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default

will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk of Court, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: May 12, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 168A]

### Return on Service of Writ

I hereby certify and return, that on the 12th day of May 1965, I received this summons and served it together with the Answer; cross complaint; (for declaratory relief); Order to Show Cause and motion for order to show cause as follows: by serving a copy of each on Mr. Kenneth Glasgow on the 13th day of May, 1965 at his home at 704 Shasta Street, Eagle Point, Oregon (P. O. Box is 31).

Eugene G. Hulett, United States Marshal, District of Oregon, By Clarence L. Dizney, Deputy United States Marshal.

### Marshal's Fees

Travel .....	\$69.60	return Re: Nauta
Service .....	6.00	
	<hr/>	
	\$75.60	

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol. 169]

[Stamp—U. S. District Court, District of Oregon—Filed  
Jun 11 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

ELLIS D. CLARK, et al., Defendants.

SUMMONS

To the following Defendant: Ellis D. Clark

You are hereby summoned and required to appear and defend this action and to serve upon attorneys, for Defendant Greyhound Lines, Inc.: Koerner, Young, McCulloch & Dezendorf; John Gordon Gearin, whose address is: 800 Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk of Court, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: May 12, 1965 .

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 169A]

## Return on Service of Writ

I hereby certify and return, that on the 12th day of May 1965, I received this summons and served it together with The Answer; cross complaint; (for declaratory relief); Order to Show Cause and motion for order to show cause as follows: by serving a copy of each on MR. ELLIS D. CLARK on the 14th day of May, 1965 at his new home apartment No. 5 at 3410 South Pacific Blvd., Albany, Oregon.

Eugene G. Hulett, United States Marshal, By  
 Clarence L. Dizney, Deputy United States Marshal.

## Marshal's Fees

Travel .....\$ See return for Kenneth Glasgow  
 Service..... 6.00

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\$6.00

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]



[fol. 170]

[Stamp—U. S. District Court, District of Oregon—Filed  
Jul 8 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

ELLIS D. CLARK et al., Defendants.

SUMMONS

To the following named Defendant: Johnathon Ziady.

You are hereby summoned and required to appear and defend this action and to serve upon Koerner, Young, McCulloch & DeZendorf; John Gordon Gearin, attorneys, for Defendant Greyhound Lines, Inc. whose address is 800 Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: May 12, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 170A]

## Return on Service of Writ

I hereby certify and return, that on the 12th day of May 1965, I received this summons and served it together with the Answer, Cross claims/Demand for Jury Trial/Motion for Order, & Order to show cause herein as follows: and at 11:50 A.M. I served the writs above mentioned on Johnathon Ziady, by handing a copy to Monte Kawahara a room mate of Ziady at 608 E 15th St, Eugene, Oregon, on May 15, 19

Eugene G. Hulett, United States Marshal, District of Oregon, By \_\_\_\_\_, Deputy United States Marshal.

## MARSHAL'S FEES

Travel.....	\$27.36 (228 R.T.M.)
Service.....	6.00
	<hr/>
	33.36

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol. 171]

[Stamp—U. S. District Court, District of Oregon—Filed  
Jul 8 1965—Keith Burns, Clerk, By H. Jorgensen, Deputy]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Civil Action File No. 65-30

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

v.

ELLIS D. CLARK et al., Defendants.

SUMMONS

To the following named Defendant: Zola Moyden.


You are hereby summoned and required to appear and defend this action and to serve upon Koerner, Young, McColloch & Dezendorf; John Gordon Gearin, attorneys, for Defendant Greyhound Lines, Inc. whose address is 800 Pacific Building, Portland, Oregon 97204 an answer to the Cross-Claims for Declaratory Relief and Order to Show Cause which is herewith served upon you, within 45 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claims for Declaratory Relief.

Keith Burns, Clerk, E. Nowell, Deputy Clerk.

[Seal of Court]

Date: May 12, 1965

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.



[fol. 171A]

## Return on Service of Writ

I hereby certify and return, that on the 17th day of May 1965, I received this summons and served it together with the complaint herein and copy of Answer, Cross-Claims, Demand for Jury Trial, Motion for Order and Order to Show Cause as follows: by handing to and leaving a true and correct copy of each with Zola Moyden, (Mayden) Nine Mile Creek, Huson, Montana, her residence, at 9:30 A.M.

George A. Bukovatz, United States Marshal, By  
 \_\_\_\_\_, Deputy United States Marshal.

## MARSHAL'S FEES

Travel..... \$36.00 (300 miles)

Service..... 6.00

Mailing fee.. 2.00

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\$44.00

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[Stamp—Marshal's Civil No. 7073]

[fol. 172]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil No. 65-30

[Title omitted]

ANSWER TO CROSS CLAIM—Filed May 14, 1965

Defendants Theron Nauta and Greyhound Lines, Inc., for answer to the Cross Claim of defendant Mary Ann Pankow, deny each and every allegation contained therein

[File endorsement omitted]



and the whole thereof except as admitted in the Answer and Cross Claim filed on behalf of defendant Greyhound Lines, Inc.

Wherefore, having fully answered the Cross Claim of defendant Mary Ann Pankow, defendants Theron Nauta and Greyhound Lines, Inc. pray that she take nothing thereby.

Koerner, Young, McColloch & Dezendorf, John Gordon Gearin, Kaye C. Robinette, Attorneys for defendants Greyhound Lines, Inc. and Theron Nauta, 800 Pacific Building, Portland, Oregon 97204.

[fol. 173] CERTIFICATE OF SERVICE BY MAIL (omitted in printing).

[fol. 178]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Civil No. 65-30

[Title omitted]

MOTION TO DISMISS, OR, IN THE ALTERNATIVE, FOR  
CHANGE OF VENUE—Filed May 17, 1965

Come Now the defendants Katherine Tashire; Eva Smith, Harry Smith, Lillian G. Fisher, Barbara McGalliand, Doris Rogers, Gail R. Gregg, and Richard L. Walton, heir of Sue M. Walton, and move the Court as follows:

For an order dismissing the plaintiff's action in the nature of interpleader and for an order dissolving any temporary restraining order heretofore entered by this court, upon the ground and for the reason that it appears from the pleadings in this cause that the court lacks jurisdiction of the parties; and,

[File endorsement omitted]

In the alternative, these defendants move this court for an order changing the venue of this cause from the District of Oregon to the Northern District of California.

Green, Richardson, Green & Griswold, By James B. Griswold.

[fol. 181] Affidavit of Service (omitted in printing).

[fol. 182]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil No. 65-30

[Title omitted]

MOTION IN LIMINE TO QUASH AND DISMISS, OR, IN THE ALTERNATIVE, FOR CHANGE OF VENUE—Filed May 21, 1965

Comes Now the defendant Donald Wood and appearing specially, moves the Court as follows:

For an order quashing service of process and the orders to show cause allegedly served upon the defendant Donald Wood upon the ground and for the reason that it appears from the records in this Court and cause that no personal service was had upon the defendant Donald Wood, and for an order dismissing the plaintiff's action in the nature of interpleader and for an order dissolving any temporary restraining order heretofore entered by this Court upon the ground and for the reason that it appears from the pleadings in this cause that the Court lacks jurisdiction of the parties; and in the alternative, this defendant moves this Court for an order changing the venue of this cause from the District of Oregon to the Northern District of California.

Nels Peterson, Nick Chaivoe, Donald H. Londer,  
Mercedes F. Deiz, By Nick Chaivoe.

[File endorsement omitted]

[fol. 188] Affidavit of Service (omitted in printing).

[fol. 193]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

1 June 1965

East, J.

Reporter, JM; Deputy, DER

Civil No. 65-30

STATE FARM FIRE &amp; CASUALTY CO.

vs.

ELLIS CLARK, et al.

BLOTTER ENTRY OF HEARING ON MOTIONS TO DISMISS

Pltfs Attys—Otto Skopil.

Defts Attys—John Gearin, Mercedes F. Deiz, James Griswold.

Record of hearing on motions of Defts Katherine Tashire etc; Donald Wood and Henry Carey, et al. to dismiss order denying motions to dismiss.

Record of hrg on motions of Defts Katherine Tashire et al.; Donald Wood and Henry Carey et al. for change of venue.

Order continuing motions for change of venue until further order of court.

Record of hrg on motion of Donald Wood to quash service of summons etc.

Order continuing motion to quash until amended substituted service acquired.

[fol. 194]

## IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil No. 65-30

[Title omitted]

ORDER—June 1, 1965

This matter having come on to be heard on the 1st day of June, 1965, before The Honorable William G. East upon the motion of the defendants Katherine Tashire, Eva Smith, Harry Smith, Lillian G. Fisher, Barbara McGalliand, Doris Rogers, Gail R. Gregg, and Richard L. Walton, heir of Sue M. Walton to dismiss or, in the alternative, for change of venue and for an order dissolving the temporary restraining order heretofore entered, and upon defendant Donald Wood's motion to dismiss plaintiff's action in the nature of interpleader or, in the alternative, for change of venue and for an order dissolving any restraining [fol. 195] order heretofore entered, and upon the motion of defendants Henry Carey and Burl Simington to withdraw answer and to dismiss plaintiff's action or, in the alternative, for change of venue, the defendants Tashire, Smith, Fisher, McGalliand, Rogers, Gregg, and Walton appearing by James B. Griswold, the defendant Wood appearing by Nick Chaivoe, the defendants Carey and Simington appearing by Mercedes F. Deiz, and the defendant Greyhound Lines, Inc. appearing by John Gordon Gearin, and the plaintiff appearing by Otto R. Skopil, Jr., and the Court being advised in the premises, now, therefore,

It is Ordered that the defendants', Katherine Tashire, Eva Smith, Harry Smith, Lillian G. Fisher, Barbara McGalliand, Doris Rogers, Gail R. Gregg, and Richard L. Walton, heir of Sue M. Walton; motion to dismiss the

[File endorsement omitted]



action and dissolve the restraining order be and the same is hereby denied, and that the defendant Donald Wood's motion to dismiss the action and dissolve the restraining order be and the same is hereby denied, and that the defendants' Henry Carey and Burl Simington motion to dismiss the action be and the same is hereby denied.

It is further Ordered that the alternative motion filed by each of the aforementioned defendants to change the venue of this cause be and the same is hereby continued.

Dated this 1st day of June, 1965.

William G. East, District Judge.

Presented by: Otto R. Skopil, Jr., Of Attorneys for plaintiff.

[fol. 204]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil No. 65-30

[Title omitted]

NOTICE OF APPEAL OF KATHERINE TASHIRE, ET AL.  
—Filed June 30, 1965

Notice Is Hereby Given that the defendants Katherine Tashire, Eva Smith, Harry Smith, Lillian G. Fisher, Barbara McGalliard, Doris Rogers, Gail R. Gregg, and Richard L. Walton, heir of Sue M. Walton, hereby appeal to the United States District Court for the Ninth Circuit from the order entered herein on June 1, 1965, denying these defendants' motion to dissolve the temporary restraining order heretofore entered by this court and denying

[File endorsement omitted]

these defendants' motion to dismiss plaintiff's action in the nature of interpleader.

Green, Richardson, Green & Griswold, By James B. Griswold.

[fol. 206]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Civil No. 65-30

[Title omitted]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL  
—Filed June 30, 1965

Come Now defendants Katherine Tashire, Eva Smith, Harry Smith, Lillian G. Fisher, Barbara McGalliard, Doris Rogers, Gail R. Gregg, and Richard L. Walton, heir of Sue M. Walton, appellants in the above matter, and designate the following portions of the record in this cause to be contained in the record on appeal:

- (1) Plaintiff's pleading titled, "Action in the Nature of Interpleader;"
- (2) All documents relating to methods and means of service of process on those defendants listed in Paragraph 8 of plaintiff's pleading;
- (3) Restraining Order dated May 3, 1965;
- (4) Motion of these defendants to dissolve the temporary restraining order and to dismiss plaintiff's action, or in the alternative, for change of venue;
- (5) Order dated June 1, 1965.

Green, Richardson, Green & Griswold, By James B. Griswold.

[File endorsement omitted]

[fol. 207] Certificate of Service (omitted in printing).

[fol. 210]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Civil No. 65-30

[Title omitted]

NOTICE OF APPEAL OF DONALD WOOD—Filed June 30, 1965

Notice Is Hereby Given that the defendant Donald Wood hereby appeals to the United States District Court for the Ninth Circuit from the order entered herein on June 1, 1965, denying this defendant's motion to dissolve the temporary restraining order heretofore entered by this Court and denying this defendant's motion to dismiss plaintiff's action in the nature of interpleader.

Nels Peterson, By: Nick Chaivoe.

[File endorsement omitted]

[fol. 211]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Civil No. 65-30

[Title omitted]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL—  
Filed June 30, 1965

Comes Now defendant Donald Wood, appellant in the above matter, and designates the following portions of the record in this cause to be contained in the record on appeal:

- (1) Plaintiff's Action in the Nature of Interpleader;
- (2) Restraining Order dated May 3, 1965;

[File endorsement omitted]

- (3) All Documents, Return Cards, or any other Indicia of Service on the Non-Resident Alien Citizens and Residents of Canada;
- (4) Motion of this defendant to dissolve the temporary restraining order and to dismiss plaintiff's action, or in the alternative, for change of venue;
- (5) Order dated June 1, 1965.

Nels Peterson, By: Nick Chaivoe.

[fol. 212] Certificate of Service (omitted in printing).

[fol. 214]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Civil No. 65-30

[Title omitted]

DESIGNATION BY APPELLEE OF ADDITIONAL MATTERS TO BE  
INCLUDED IN RECORD—Filed July 9, 1965

To the Clerk of the above-named Court:

Appellee, as authorized by Rule 75(a) of the Federal Rules of Civil Procedure, designates the following additional matters to be included in the record on appeal in this action, in addition to those already designated by appellants:

- (1) The remaining complete record and proceedings in this action.

Dated July 7, 1965.

Williams, Skopil & Miller, By Otto B. Skopil, Jr.,  
Of Attorneys for Appellee, Capitol Tower, Salem,  
Oregon.

[File endorsement omitted]

[fol. 215] Certificate of Service (omitted in printing).



## UNITED STATES DISTRICT COURT

Civil Docket 65-30

Jury demand date: Mar. 25, 1965—Deft.

## DOCKET ENTRIES

---

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff,

vs.

ELLIS D. CLARK, KENNETH GLASGOW, THERON NAUTA, ALICE ATTNEAVE, JAMES BRIGGS, GLADYS BUSHYHEAD, HENRY CAREY, MAXINE CAREY, MARY SHISEFSKI, LILLIAN G. FISHER, MILDRED FORRESTER, CLEO FOSTER, GAIL R. GREGG, GLADYS HART, GARY L. HENRY, HELEN C. HOHEN-SINNER, EDWARD HOLLENBECK, RICHARD E. A. JAMES, MARY ANN JONES, BARBARA MCGALLIAND, MARIA MARTIN, THOMAS MERRICK, ZOLA MOYDEN, MARY POOLEY, DORIS ROGERS, ALLAN SCHMIDT, BURL SIMINGTON, MAGGCHELTSE SMIT, EVA SMITH, HARRY SMITH, JENNIFER SIBBIT, KATHERINE TASHIRE, RONALD N. TATE, LUCILLE WEST-OVER, RICHARD L. WALTON, JOHN DOE WILSON, DONALD WOOD, JOHNATHON ZIADY, GREYHOUND LINES, INC., Defendants.

---

Call Date 4/19/65

For plaintiff:

Williams, Skopil &amp; Miller, Pioneer Trust Building, Salem, Oregon.

Defendant's Attorneys:

Deft. Ziady:

C. J. Ziady, 276 32nd Ave., San Francisco, 21, Cal.

Jonathan Ziady, 608 E. 15th St., Eugene, Ore.

For Defendant: Nauta:

Hugh B. Collins, 107 East Main Street, Medford, Oregon.

For Greyhound Lines, Inc.:

John Gordon Gearin, McColloch & Dezendorf & Spears,  
800 Pacific Bldg.

For: Defts. Mary Pooley and Marie Martin.

Pozzi, Levin & Wilson, 808 Standard Plaza

Sterbick, Manza, Mocerri & Sterbick, 2624 South 38th  
Street, Tacoma, Wash.

For Defts. Mary Chisefski and Edward Hollenbeck:

Wm. A. Babcock, 1210 South A. St., Springfield.

Leep & Saunders, P. O. Box 1041, 1440 West Street,  
Redding, Calif.

For deft: Gary L. Henry:

E. B. Sahlstrom, J. Michael Starr, 140 South Park,  
Eugene, Oregon.

For deft. James Briggs:

Donald E. Hershiser, Hershiser, McMenamin, Blyth &  
Jones, 516 Oregon Bank Building.

For deft. Maxine Carey:

Richard Holt, Box W, Issaquah, Wash.

For defts. Henry Carey, Burl Simington

Nels Peterson, Mercedes F. Deitz, 300 S. W. Madison.

For deft. Helen C. Hohensinner:

Pozzi, Levin & Wilson, 808 Standard Plaza Bldg.

Steele and McGoffin, 706 Puget Sound Bank Bldg., Ta-  
coma, Wash.

James B. Griswold, Green, Richardson, Green & Gris-  
wold, 1003 Corbett Bldg.

For defts. Donald Wood, Mary Chisefski and Edward Hol-  
lenbeck

Nick Chaivoe, Nels Peterson, 300 S. W. Madison Street  
97204

[fol. 227]

Date

*Proceedings*

1965

- |      |    |   |
|------|----|---|
| Jan. | 22 | Filed complaint   |
|      | 22 | Filed plaintiff's motion for order to show cause  |
|      | 22 | Filed and entered order to show cause why order of this Court should not be entered temporarily restraining |
|      | 22 | Filed praecipe re service of summons  |
|      | 22 | Issued summons to Marshal for service on defendants in Oregon   |
|      | 25 | Issued summons to Marshal for service on defendants in Washington   |
|      | 25 | Issued summons to Marshal for service on defendants in California   |
|      | 25 | Issued summons to Marshal for service on defendant Gary L. Henry in South Dakota                            |
|      | 25 | Issued summons to Marshal for service on defendant Zola Moyden in Montana                                   |
|      | 27 | Filed praecipe for issuance of summons on Canadian defendants   |
|      | 27 | Mailed summons to defendants in Canada by registered mail, return receipts requested                        |
| Feb. | 5  | Filed first interrogatories of defendant Nauta  |
|      | 11 | Filed defendant Nauta motion to dismiss   |

## Date

## Proceedings

1965

- Feb. 12 Filed summons with Marshal's return on defendants in Canada
- 12 Filed defendant Greyhound Lines, Inc. motions and objection to issuance of temporary restraining order
- 18 Filed plaintiff's statement of reasons and authorities in opposition to motions of defendants Nauta and Greyhound
- 18 Filed answer and cross-claim of defendant Maria Martin
- 18 Filed answer and cross-claim of defendant Mary Pooley
- 18 Filed affidavit of service by mailing of Virginia M. Fauver
- 18 Filed appearance of C. J. Ziady
- 19 Entered order striking pending motions set week of 2/23 and reset week of 3/15/65
- 25 Filed defendant's motions and objection to issuance of temporary restraining order
- 26 Filed stipulation for extension of time in which to reply to interrogatories
- 26 Filed and entered order allowing extension of time to reply to interrogatories
- Mar. 2 Filed notice of appearance of defendants Mary Pooley and Maria Martin
- 4 Filed answer of Gary L. Henry
- [fol. 228]
- 4 Filed supplementary appearance of Jonathan Ziady



*Date**Proceedings*

1965

- Mar. 15 Filed notice of appearance of Mary Chaisefski and Edward H. Hollenbeck
- 15 Record of hearing on motion of Hugh Collins to dismiss; entered order denying motion (m 3/17/65)
- 15 Record of hearing on motion and objections to issuance of temporary restraining order; entered order that it is premature as time for service has not expired (m 3/17/65)
- 15 Record of motion to dismiss and objection to show cause withdrawn by Greyhound (m 3/17/65)
- 15 Record of motion for permission of Greyhound to file cross-complaint and segregate issue of liability; entered order allowing motion to file cross complaint within 10 days (m 3/17/65)
- 15 Entered order setting for call 5/17/65 for status report (m 3/17/65)
- 17 Filed defendant Greyhound Lines, Inc. answer to cross-claim and counter-claim of defendant Hohensinner
- 18 Filed answer of defendants Henry Carey and Burl Simington
- 24 Filed answer of Defendant James Briggs
- 25 Filed answer, cross-claims for declaratory relief and demand for trial by jury Greyhound Lines
- 25 Filed defendant Greyhound Lines, Inc. motion for order to show cause within 45 days of the date service why an injunction should not issue restraining plaintiff and co-defendants

*Date**Proceedings*

1965

Mar. 25 Filed and entered order to show cause within 45 days

[fol. 229]

29 Filed answer and cross claim of defendant Hohensinner

Apr. 1 Filed answer and cross claim of defendant Hohensinner

13 Filed summons with Marshal's return, Zola Moyden

13 Filed summons with Marshal's return, James Briggs

13 Filed summons with Marshal's return, Gary L. Henry

13 Filed summons (9) Western District of Washington with Marshal's return

13 Filed summons (8) Northern District of California, 1 "unexecuted", Gladys Hart

13 Filed summons (7) District of Oregon

13 Filed stipulation to file answer and cross claim

13 Filed answer and cross claim of defendant Mary Ann Jones

13 Filed praecipe for issuance of summons

14 Issued summons for service on defendants Clark, Glasgow, Nouta & Greyhound Lines, Inc. on answer and cross-claim of defendant Mary Ann Jones to Marshal Greyhound Lines, Inc.

16 Filed certificate of service by mail attorney for defendant Henry Carey

16 Filed Greyhound Lines, Inc. certificate of service by mail on defendant James Briggs

*Date**Proceedings*

1965

- Apr. 16 Filed Greyhound Lines, Inc. certificate of service by mail on defendant Edward Hollenbeck
- 16 Filed Greyhound Lines, Inc. certificate of service by mail on defendant Mary Shisefski
- 16 Filed Greyhound Lines, Inc. certificate of service by mail on defendant Gary L. Henry
- 16 Filed Greyhound Lines, Inc. certificate of service by mail on defendant Maria Martin
- 16 Filed Greyhound Lines, Inc. certificate of service by mail on defendant Mary Pooley
- 16 Filed Greyhound Lines, Inc. certificate of service by mail on defendant Helen C. Hohensinher
- 16 Filed Greyhound Lines, Inc. certificate of service by mail on defendant Burl Simington
- 19 Filed summons with Marshal's return, Gladys Hart
- 19 Entered order placing Objections to issuance of temporary restraining order on motion calendar 4/26/65 before Judge Kilkeny
- 20 Entered order striking from motion calendar of 4/26 and order setting all motions, objections and related matters for hearing on 5/17/65
- [fol. 230]
- 26 Filed and entered order denying motion of defendants Mary Chaisefski and Edward Hollenbeck to set aside order to show cause and dismiss complaint; and further order that objections of defendants to issuance of temporary restraining order are overruled.
- 26 Filed acceptance of service on behalf of defendant Maxine Carey

*Date**Proceedings*

1965

- Apr. 28 Filed statement of reasons and authorities in opposition to motions of defendants Chisefski and Hollenbeck
- 30 Filed plaintiff's answers to interrogatories of defendant Nauta
- May 3 Filed and entered order temporarily restraining defendants, except Gladys Hart, from instituting or prosecuting any proceedings in any state or U.S. Court affecting the property or obligation involved in this interpleader action, etc.
- 5 Filed Marshal's return on service of writ, Gladys Hart, "unexecuted"
- 10 Filed defendant Greyhound Lines, Inc. certificate of service by mail
- 12 Filed praecipe for issuance of summons
- 14 Filed defendant's Theron Nauta and Greyhound Lines, Inc. answer to cross-claim.
- 14 Filed summons with Marshal's return
- 17 Filed defendants motion to dismiss, or in the alternative for change of venue
- 17 Filed defendants Henry Carey and Burl Simington motion to withdraw answer to dismiss, or, in the alternative, for change of venue
- 17 Record of counsel reporting status of case
- 17 Filed defendant Greyhound Lines, Inc. certificate of service by mail
- 21 Filed defendant Donald Wood motion in limine to quash and dismiss, or, in the alternative, for change of venue



*Date**Proceedings*

1965

May 28 Filed plaintiff's response to motions of defendants Carey, Simington, Wood, Tashire, Eva Smith, Harry Smith, Fisher, McGalliland, Rogers, Gregg and Walton

28 Filed plaintiff's affidavit of service by mail

28 Filed praecipe re issuance of summons on defendant Gladys Hart

June 1 Filed affidavit in support of motion for change of venue or for reference of suit to State Court

1 Record of hearing on motions of defendants Katherine Tashire, Donald Wood and Henry Carey, et al to dismiss; entered order denying motions to dismiss (m 6/2/65)

1 Record of hearing on motions of defendants Katherine Tashire, Donald Wood and Henry Carey, et al for change of venue; entered order continuing motions for change of venue until further order of court (m 6/2/65)

[fol. 231-2]

1 Record of hearing on motion of Donald Wood to quash service of summons, ect.; entered order continuing motion until amended substituted service acquired (m 6/2/65)

8 Filed order denying defendant's motion to dismiss action and dissolve restraining order and that defendant Donald Wood's motion to dismiss action, etc. be denied and that defendants Henry Carey and Burl Simington motion to dismiss action be denied; further order that alternative motion filed by defendants to change venue of this cause be continued

Date

Proceedings

1965

- June 11 Filed summons with Marshal's return, Ellis Clark
- 11 Filed certificate of service by mail to attorney Nick Chaivoe, Portland
- 11 Filed certificate of service by mail to attorney Hugh B. Collins, Medford
- 14 Filed summons with Marshal's return, Gladys Hart
- 21 Filed amended return of service by Marshal on defendant Donald Wood
- 28 Filed defendants Lucille Westover, Richard E. A. James and heirs of Jean Goudie Wilson motion to dismiss, or motion to quash return of service of summons, and motion for dissolution of restraining order
- 30 Filed Notice of Appeal by defendants Tashire, Eva Smith, Harry Smith, Fisher, McGalliand, Rogers, Gregg and Walton.
- 30 Filed Bond for Costs on Appeal
- 30 Filed Designation of Record on Appeal by defendants Tashire, et al (served)
- 30 Filed Notice of Appeal by defendant Donald Wood (served)
- 30 Filed Cost Bond on Appeal
- 30 Filed Designation of Contents of Record on Appeal by defendant Wood (served)
- July 1 Mailed copies of Notice of Appeal by defendants Tashire, et al to all counsel set forth in letter of James B. Griswold dated June 30, 1965
- 8 Filed seventeen (17) summons' with Marshal's return

*Date**Proceedings*

1965

- July 9 Filed designation by appellee of additional matters to be included in record
- 9 Filed Certificate of Janeta M. Stone of service by mail
- 9 Filed notice of hearing on order of default 7/30/65, 9:30 A.M. by Greyhound Lines
- 15 Filed defendants Lillian G. Fisher, Doris Rogers, Gail R. Gregg and Richard L. Walton motion for order dissolving and setting aside restraining order dated 5/3/65
- 16 Filed plaintiff's response to motions of defendants Lucille Westover, Richard E. A. James, and the heirs of Jean Goudie Wilson, Lillian G. Fisher, Doris Rogers, Gail R. Gregg, and Richard L. Walton
- 16 Filed answer of defendant James Briggs to cross-claim of Greyhound Lines, Inc.
- [fol. 233]
- 19 Filed James B. Griswold affidavit of service of motion for order dissolving and setting aside restraining order
- 19 Record of hearing on motion of defendants Lillian G. Fisher, et al for order dissolving and setting aside restraining order dated 5/3/65; entered order granting leave to parties to institute proceedings and secure service of summons, etc. in other jurisdictions
- 19 Record of hearing on motion of Lucille Westover, et al to dismiss, or motion to quash return of service of summons, and motion for dissolution of restraining order; entered order denying motion to dismiss, etc.

## Date

## Proceedings

1965

- July 19 Record of hearing of oral motion of defendant Wood to quash service of summons, etc.; entered order taking under advisement
- 19 Entered order setting case for call 1/3/66
- 19 Entered order striking hearing on order of default 7/30/65 and resetting to 9/7/65, 9:30 A.M. before Judge East
- 19 Filed order granting leave to parties to institute proceedings and secure service of summons, etc. in other jurisdictions in re motion for order dissolving and setting aside restraining order dated 5/3/65
- 20 Filed substitution of attorney Nels Peterson as attorney of record of defendants Mary Chisefski and Edward Hollenbeck in place of William A. Babcock
- 22 Filed amended answer, counter claim and cross claim of defendant Hohensinner and demand for jury trial
- 22 Filed amended answer, counter claim and cross claim of defendant Mary Pooley and demand for jury trial
- [fol. 234]
- 22 Filed amended answer, counter claim and cross claim of defendant Maria Martin and demand for jury trial
- 22 Filed certificate of service by mail of Janeta M. Stone
- 23 Filed answer of defendant Greyhound Lines, Inc. to counterclaim and cross-claim of defendant Hohensinner



*Date**Proceedings*

1965

- July 23 Filed answer of defendant Greyhound Lines, Inc. to counterclaim and cross-claim of defendant Mary Pooley
- 23 Filed answer of defendant Greyhound Lines, Inc. to counterclaim and cross-claim of defendant Maria Martin
- 26 Filed praecipe reservice of summons Donald Wood
- 26 Issued 2 summons for Donald Wood—to Marshal
- 28 Filed and entered order to release record for photocopying (on stipulation)
- 29 Filed defendant Maxine Carey answer to plaintiff's complaint and counter claim and cross complaint
- Aug. 6 Filed plaintiff's motion for extension of time within which to file the transcript of record
- 9 Filed defendants Theron Nauta and Greyhound Lines, Inc. answer to cross-complaint of defendant Maxine Carey
- 9 Filed notice of appearance of McColloch, Dezen-dorf & Spears for and on behalf of defendant Theron Nauta with respect to cross-complaints
- 9 Filed and entered order extending time to and including 9/9/65 within which plaintiff may file transcript of record
- 17 Filed motion of defendants Mary Shisefski, Edward Hollenbeck and Zola Mayden for order to join, dismiss and to dissolve temporary restraining order and to join in the appeal from order denying the same

**Date****Proceedings****1965**

- Aug. 17 Filed motion of defendants Mary Shisefski, Edward Hollenback, Zola Mayden, Burl Simington and Henry Carey for order to stay all further proceedings on defendant Greyhound Lines' cross claim for declaratory relief and order to show cause *(attached to above motion)*
- 25 Entered order striking hearing on order of default 9/7/65 and resetting to 9/20/65, 9:30 A.M.
- 25 Entered order striking defendants Shisefski, et al motion for leave to join, to dismiss, etc. from motion calendar 9/7/65 and resetting to 9/20/65, 9:30 A.M.
- 31 Filed amended answer, counter claim and cross claim of defendant Gary L. Henry, and demand for jury trial
- [fol. 235] 31 Filed Clerk's copy of Reporter's Transcript of Proceedings of June 1, 1965
- [fol. 236] Clerk's Certificate (omitted in printing).

[fol. 245]

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 20,380

KATHRYN TASHIRE, EVA SMITH, HARRY SMITH, LILLIAN G.  
FISHER, BARBARA MCGALLIAND, DORIS ROGERS, GAIL R.  
GREGG, RICHARD L. WALTON, heir of SUE M. WALTON,  
and DONALD WOOD, Appellants,

vs.

STATE FARM FIRE AND CASUALTY COMPANY,  
and GREYHOUND LINES, INC., Appellees.

Appeal from the United States District Court  
for the District of Oregon

Before: Barnes and Jertberg, Circuit Judges, and  
Mathes, Senior District Judge

OPINION—June 30, 1966

Mathes, Senior District Judge:

This appeal from an interlocutory order of the United States District Court for the District of Oregon, refusing to dissolve a restraining order issued under 28 U.S.C. §2361, arises out of a California accident between an automobile driven by one Ellis D. Clark and a Greyhound Lines bus operated by one Theron Nauta. Following this accident Clark's insurer, appellee State Farm Fire and Casualty Company, instituted an "Action in the Nature of Interpleader" in the District Court, asserting Federal jurisdiction under 28 U.S.C. §§1332 and 1335, and naming as defendants the insured Clark, Greyhound Lines, bus driver Nauta, the owner of Clark's vehicle, and thirty-five bus passengers or their personal representatives.

[fol. 246] Appellee State Farm's complaint "in the nature of interpleader" [28 U.S.C. §1335(a)] alleges that the insurer is incorporated and has its principal place of business in the State of Illinois, and that defendants are citizens of various provinces of Canada and of states other than Illinois. The complaint further alleges that defendants are, or claim to be, injured as a result of the California collision between the Clark vehicle and the Greyhound bus, or otherwise have or claim to have, an interest in the automobile insurance policy issued by State Farm to Clark.

This policy provides for personal liability coverage for bodily injury limited to \$10,000 for each person and \$20,000 for each occurrence. Appellee State Farm also alleges that, at the time of filing of the complaint, at least four actions had already been commenced in the California courts against Clark and others, seeking recovery of total damages exceeding one million dollars, with additional suits anticipated; and that if the legal liability of the insured Clark for all or most of the injuries and deaths resulting from the accident were to be established, the amount of such liability would substantially exceed the policy limits.

Appellee State Farm deposited with the Clerk of the District Court the sum of \$20,000, representing the face amount of its policy to Clark, to be distributed by the Court to the extent needed to satisfy the claims of the defendants, subject to being reclaimed upon a finding that State Farm's coverage under the policy did not extend to Clark under the circumstances. However, State Farm does not admit any coverage under its policy or any liability on the part of its insured Clark. The prayer of the complaint is that the defendants who claim injury or damage be required to interplead and establish their respective claims, that an injunction issue restraining the parties from instituting or prosecuting any suits against Clark or State Farm in any other State or Federal Court, and that State Farm otherwise be discharged from all liability and duties under the contract of insurance, including the duty to defend lawsuit against the insured Clark.



The District Court, upon motion of State Farm and after a hearing, issued an order under 28 U.S.C. §2361 restraining appellants and other defendants "from instituting or prosecuting any proceedings in any state or United States [fol. 247] Court affecting the property or obligation involved in this interpleader action, and specifically against instituting or prosecuting any proceeding against the plaintiff [State Farm] or any of the defendants who may constitute the plaintiff's assured." Appellants moved to dissolve this restraining order. Their motion was denied, and this appeal followed.

After notices of appeal had been filed, the Court modified the restraining order to permit any defendant to file an action against the plaintiff, State Farm, or against any defendant, but at the same time continued the injunction in force as to all defendants "from further prosecuting any such actions . . . , and specifically against further prosecuting any proceedings against the plaintiff or defendants Ellis D. Clark, Greyhound Lines, Inc., or Theron Nauta."

This Court has jurisdiction to entertain this appeal by virtue of 28 U.S.C. §1292(a)(1), which permits appeals from interlocutory orders of the District Court "refusing to dissolve . . . injunctions." [See: *John Hancock Mut. Life Ins. Co. v. Kraft*, 200 F.2d 952 (2d Cir. 1953); *Missouri-Kansas-Texas R. Co. v. Randolph*, 182 F.2d 996 (8th Cir. 1950).]

Section 1335 of Title 28 of the United States Code provides in part that: "The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader . . . if (1) Two or more adverse claimants, . . . are claiming or may claim to be entitled . . . to any one or more of the benefits arising by virtue of any . . . policy . . . ." Whether or not an insurance company is subject to claims within §1335 is a question to be determined by State law. [See *Brillhart v. Excess Ins. Co.*, 316 U.S. 491, 496 (1942).]

State Farm's policy, attached to the complaint, provides that the insurer will "pay on behalf of the insured all sums

which the insured shall become legally obligated to pay", but expressly limits this obligation with a "no action" clause specifying that: "No action shall lie against the company: . . . until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured, after actual trial or by written agreement of the insured, the claimant and the company."

[fol. 248] Moreover, under the law of California where the accident occurred, and of Oregon where the insurance contract was entered, a direct action against the insurer is not allowable until after the claimant shall have secured a final judgment against the insured. [See: Calif. Ins. Code §§11580(b)(2), 11581; Oregon Revised Statutes §23.230.]

In states such as Louisiana, on the other hand, where direct action by an injured person against the insurer as "joint tortfeasor" is provided for by statute, interpleader jurisdiction can be sustained in the absence of a judgment against the insured, since the direct-action statute gives claimants against the insured the status also of claimants against the insurer. [See *Pan American Fire & Cas. Co. v. Revere*, 188 F.Supp. 474 (E.D. La. 1960).] The "direct-action" statutes thus serve to underscore the correctness of our view that, in a case such as that at bar, a party may not "claim to be entitled . . . to one or more of the benefits arising by virtue of any . . . policy" until after his claim against the insured has been reduced to final judgment. [See: *National Cas. Co. v. Ins. Co. of North America*, 230 F.Supp. 617 (N.D. Ohio 1964); *American Indemnity Co. v. Hale*, 71 F.Supp. 529 (W.D. Mo. 1947); *contra*, *Commercial Union Ins. Co. of New York v. Adams*, 231 F.Supp. 860 (S.D. Ind. 1964).]

It should also be noted that under Rule 22(1) of the Federal Rules of Civil Procedure, which applies to actions founded upon the diversity-of-citizenship provisions of 28 U.S.C. §1332 [see *Sec. Bank v. Walsh*, 91 F.2d 481 (9th Cir. 1937)], only "persons having claims against the plaintiff [insurer] may be joined as defendants and required to interplead . . . ." Which is to say that only persons having

actionable [presently judiciable] claims against the plaintiff "may be . . . required to interplead." For the reasons already stated, then, with respect to their lack of status as "claimants" under 28 U.S.C. §1335, appellants cannot of course be said to be persons "having claims" against the insurer who may be joined as defendants and required to interplead under Rule 22(1).

Since appellants are not "claimants" within the jurisdictional requirements of 28 U.S.C. §1335, and are not "persons having claims against the plaintiff" within the permissive grant of Rule 22(1), the interlocutory order appealed from [fol. 249] must be reversed, the restraining order issued under 28 U.S.C. §2361 must be dissolved, and this "action in the nature of interpleader" must be dismissed for lack of jurisdiction over the subject matter. [See: *Treines v. Sunshine Mining Co.*, 308 U.S. 66 (1939); Fed.R.Civ.P. 12(b)(1), 12(h)(2).]

The conclusion we have reached makes it unnecessary to consider other contentions, including those as to service of process. [See: 28 U.S.C. §§1397, 1655, 2361; Fed.R.Civ.P. 4(e), 22.]

For the reasons stated, the order appealed from will be reversed, with directions to the District Court to dissolve all restraining orders now in force and dismiss the action for lack of jurisdiction over the subject matter.

[fol. 250]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
No. 20,380

KATHRYN TASHIRE, et al., Appellants,

vs.

STATE FARM FIRE AND CASUALTY COMPANY, and  
GREYHOUND LINES, INC., Appellees.

Appeal from the United States District Court for the  
District of Oregon.

JUDGMENT—June 30, 1966

This Cause came on to be heard on the Transcript of the  
Record from the United States District Court for the Dis-  
trict of Orgeon, and was duly submitted.

On Consideration Whereof, It is now here ordered and  
adjudged by this Court, that the judgment of the said  
District Court in this Cause be, and hereby is reversed with  
directions to the said District Court to dissolve all restrain-  
ing orders now in force and dismiss the action for lack of  
jurisdiction over the subject matter.

Filed and entered June 30, 1966

[fol. 251] Clerk's Certificate to foregoing transcript  
(omitted in printing).



[fol. 252]

SUPREME COURT OF THE UNITED STATES

No. 391—October Term, 1966

---

STATE FARM FIRE AND CASUALTY COMPANY, et al.,  
Petitioners,

v.

KATHRYN TASHIRE, et al.

---

ORDER ALLOWING CERTIORARI—October 10, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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FILED

JUL 28 1966

JOHN F. DAVIS, CLERK

In the  
**Supreme Court  
of the United States**

OCTOBER TERM, 1966

No. **391**

**STATE FARM FIRE AND CASUALTY COMPANY  
and GREYHOUND LINES, INC.,**  
*Petitioners,*

vs.

**KATHERINE TASHIRE, EVA SMITH, HARRY SMITH,  
LILLIAN G. FISHER, BARBARA McGALLIAND,  
DORIS ROGERS, GAIL R. GREGG, RICHARD L.  
WALTON, heir of SUE WALTON, and DONALD WOOD,**  
*Respondents.*

**PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**JOHN GORDON GEARIN**  
Eighth Floor, Pacific Building  
Portland, Oregon 97204  
*Counsel for Petitioners*



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**In the Supreme Court  
of the United States**

OCTOBER TERM, 1966

No.

**STATE FARM FIRE AND CASUALTY COMPANY  
and GREYHOUND LINES, INC.,**

*Petitioners,*

*vs.*

**KATHERINE TASHIRE, EVA SMITH, HARRY SMITH,  
LILLIAN G. FISHER, BARBARA McGALLIAND,  
DORIS ROGERS, GAIL R. GREGG, RICHARD L.  
WALTON, heir of SUE WALTON, and DONALD WOOD,**

*Respondents.*

**PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

Petitioners State Farm Fire and Casualty Company and Greyhound Lines, Inc. pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above case on June 30, 1966.

**CITATIONS TO OPINIONS BELOW**

The district court did not issue an opinion. The opinion of the court of appeals is not yet reported. It is printed in Appendix B, *infra* 15.



## JURISDICTION

The judgment of the court of appeals was entered on June 30, 1966, *infra* 20. Petitioners did not petition for rehearing. The jurisdiction of this Court is invoked under 28 USC § 1254(1).

## QUESTIONS PRESENTED

1. Whether the district court had jurisdiction under 28 USC § 1335 (the Federal Interpleader Act) over a casualty insurer's action to determine its insured's liability for unliquidated claims, ~~for~~ exceeding the policy limits, of persons of diverse citizenship arising out of a multiple-claim catastrophe, and the claimants' respective rights to the proceeds of the policy.

2. Whether the district court had jurisdiction over the action under Rule 22(1) of the Federal Rules of Civil Procedure, there being diversity of citizenship between the insurer and all defendants.

## STATUTE AND RULE INVOLVED

The statute involved is c. 646, 62 Stat. 931, 28 USC § 1335 (the Federal Interpleader Act), printed in Appendix A, *infra* 13.

The federal rule involved is Rule 22(1) of the Federal Rules of Civil Procedure, printed in Appendix A, *infra* 14.

**STATEMENT****1. The Nature of the Action**

Petitioner State Farm Fire and Casualty Company, an Illinois corporation, filed this action in the District Court for Oregon seeking a determination of (1) its liability under a policy issued in Oregon to defend and extend coverage to its insured, the Oregon driver of a pickup truck which collided with a Greyhound bus near Redding, California; and (2) an adjudication of claims against the driver for injuries, deaths and property damage resulting from the accident in amounts far exceeding the policy limits of \$20,000. A sum equal to the policy limits was paid into court. Joined as defendants were the insured driver and the owner of the pickup truck, the bus company (petitioner Greyhound Lines, Inc.) and its driver, and the 35 bus passengers (or their representatives). The defendants are citizens of Oregon, California, Washington, South Dakota, Montana and Canada. There was diversity of citizenship between State Farm and all of the defendants and among the defendants themselves. The jurisdiction of the District Court was invoked under 28 USC § 1335 (the Federal Interpleader Act) and 28 USC § 1332 (diversity of citizenship) (R 1-3, 7).

## **2. The Interpleader Allegations of the Complaint**

The complaint alleged that actions for damages totalling more than \$1,100,000 were pending against the driver and there were numerous other claims and threatened lawsuits; that liability for damages resulting from the accident, if established against an insured, would substantially exceed the policy limits; and that State Farm did not believe it was obligated on the facts to defend or extend coverage to the driver and was not authorized to admit his responsibility for the accident. However, if the Court should determine that there was coverage, it would relinquish its claim to the fund created by the deposit to the extent needed to satisfy claims against him (R 3-5).

## **3. The Prayer for Relief**

State Farm prayed for a decree adjudicating that it need not defend or extend coverage to the driver; in the alternative, it sought an order of interpleader determining that the appropriate defendants were adverse claimants to the fund and ordering those claiming injury or damage to interplead and establish their claims. It also prayed for an adjudication that the deposit of the policy limits discharged its responsibilities under the policy and for an injunction restraining all parties from instituting or prosecuting any other proceedings against State Farm or the driver (R 5-6).

#### **4. Proceedings in the District Court**

On May 3, 1965, after a hearing on an order to show cause, the district court entered an order under 28 USC § 2361 temporarily restraining defendants<sup>1</sup> from instituting or prosecuting proceedings in any state or federal court affecting the property or obligation involved in the action, and specifically proceedings against State Farm or any defendants who might constitute its insureds (R 148-150). Thereafter, the defendants who were appellants in the court below moved to dissolve the restraining order and dismiss the action, claiming that the court lacked jurisdiction over some of the defendants named in the action (R 178, 182). On June 1, 1965 their motions were denied, and they took interlocutory appeals under 28 USC § 1292(a)(1) (R 194, 204, 210).

#### **5. Proceedings in the Court of Appeals**

The court of appeals did not reach or decide the question of personal jurisdiction. It held that persons having unliquidated tort claims against the insured driver for more than the policy limits arising out of the accident were not "adverse claimants" to benefits of the policy under 28 USC § 1335(a)(1) or "persons having claims" against the insurer under Rule 22(1) FRCP,

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1. Except one Gladys Hart, who was served after the order was entered.



because they could not, under the terms of the policy and the law of California and Oregon, sue the insurer before reducing their claims to judgment (R 245-249; *infra* 15-19. It reversed the order appealed from, with instructions to dismiss the action for lack of jurisdiction over the subject matter (R 250; *infra* 20).

### **REASONS FOR GRANTING THE WRIT**

**1. The decision below is in conflict with the decision of another Court of Appeals on the same matter.**

The decision of the court below is in direct and absolute conflict with the decision of the Court of Appeals for the Eighth Circuit in *Underwriters at Lloyd's, et al v. R. H. Nichols, et al*, also decided June 30, 1966. In *Nichols*, the court, in an exhaustive opinion by Chief Judge Vogel, sustained the district court's jurisdiction under Rule 22(1) FRCP over an interpleader action seeking (1) to adjudicate the plaintiffs' liability under a crop-dusting liability policy for unliquidated tort claims against their insured exceeding the policy limits; (2) to compel all claims against their insured to be litigated in the interpleader action; and (3) proration of the policy limits, which were tendered into court, among those whose claims should be sustained. The liability of the insured for any claims was denied.

The Eighth Circuit expressly rejected the Ninth Circuit's conclusion that unliquidated tort claims against

an insured for more than the policy limits are not "claims" by which the insurer "is or may be exposed to double or multiple liability" under Rule 22(1) FRCP unless the insurer is subject to a direct action under state law.<sup>2</sup>

"We do not feel that the use of interpleader should or does depend upon the existence or absence of a direct action statute. \* \* \*" (Infra 32)

The court also concluded that persons having such claims are "adverse claimants" to benefits of the policy under 28 USC § 1335, as amended in 1948, since they "are claiming or may claim to be entitled" to such insurance or benefits.<sup>3</sup> The full text of *Underwriters at Lloyd's v. Nichols* is printed in Appendix C, infra 21.

The conflict between these two decisions is so complete and so evident on the face of the opinions that extended analysis is felt to be unnecessary. A fundamental and important question of federal jurisdiction divides the two circuits and should be resolved by this Court.

2. No direct action was available under Arkansas law. The district court, which was reversed in *Nichols*, had adopted the position of the Ninth Circuit. (DC ED Ark 1966) 250 F Supp 837.

3. The Federal Interpleader Act was only collaterally involved, because the defendants were all citizens of Arkansas. The court, however, held that it was *in pari materia* with Rule 22(1) and cited cases under the statute to support its decision (infra 26-27).

2. The Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

This case presents for decision the important question whether federal jurisdiction under the Federal Interpleader Act and Rule 22(1) FRCP extends to actions by insurers who, for their own protection and to secure the equitable apportionment of a limited fund, seek to adjudicate in a single proceeding their own and their insured's responsibility to persons whose injury and death claims arising from a multiple-claim catastrophe have engulfed the policy limits.

a. Mass torts whose effects extend beyond the lines of a single state are of increasing frequency under contemporary social and economic conditions. They present difficult problems to insurers, claimants and the courts, problems which are unquestionably within the purposes of interpleader.<sup>4</sup> The burden and expense of litigating the same issues of fact and law over and over again in many different courts, the risk of contradictory findings or the application of differing substantive rules to persons similarly situated both as to liability and the fund, the danger to the insurer of multiple liability through the application of conflicting state rules regulating liens,

4. The ineffectiveness of available procedures in the absence of a fund has been noted. See 63 Yale L J 493 (1954): *Procedural Devices for Simplifying Litigation Stemming from a Mass Tort*.

priority of judgments and equitable apportionment,<sup>5</sup> and the inequitable results of a race to judgment in which satisfaction of one claim will exhaust the fund—all are serious problems which accompany major catastrophes. In such cases, interpleader provides a forum and a single proceeding in which the insurer can be protected, closely-related claims can be litigated together, and the fund can be equitably apportioned. *Maryland Casualty Co. v. Glassell-Taylor & Robinson*, (CCA 5 1946) 156 F2d 519 at 523-524. The necessary balance between these important interests and a proper regard for the jurisdiction of state courts and the litigation preferences of the claimants can only be struck by this Court.

b. The confusion in the decisions of the lower courts is complete. Decisions in the district courts under the 1948 Judicial Code revision of 28 USC § 1335 and Rule 22(1) FRCP are so contradictory as to indicate the need for this Court to review the problem quite apart from the conflict between the Eighth and Ninth circuits. Interpleader has been upheld in *Pan American Fire & Casualty Company v. Revere*, (DC ED La 1960) 188 F Supp 474 and *Commercial Union Insurance Co. of New York v. Adams*, (DC SD Ind 1964) 231 F Supp 860.<sup>6</sup> It was

5. Anno: 70 ALR 2d 416 (1960); 8 Appleman on Insurance Law and Practice (1962 Ed) 331 (§ 4892); *Underwriters at Lloyd's v. Nichols*, supra, infra 23-24.

6. See also *A/S Kredit Bank v. Chase Manhattan Bank*, (DC SD NY 1957) 155 F Supp 30 at 33-34, aff'd (CA 2 1962) 303 F2d 648; *Standard Surety & Casualty Co. v. Baker*, (CCA 8 1939) 105 F2d 578; 3 Moore's Federal Practice (1964 Ed) 3023-3025 (§ 22.08). The history of the act and the "may claim" clause is also discussed in *Underwriters at Lloyd's v. Nichols*, supra 26-30.



denied in *National Casualty Co. v. Insurance Co. of North America*, (DC ND Ohio 1964) 230 F Supp 617 and *Underwriters at Lloyd's v. Nichols*, supra, (DC ED Ark 1966) 250 F Supp 837, rev'd (CA 8 6/30/66) \_\_\_\_ F2d \_\_\_\_.

The text writers have generally supported the views expressed in *Revere* and *Adams*. See Chafee, *The Federal Interpleader Act of 1936: II*, 45 Yale L J 1161 at 1163-1167 (1936); 3 Moore's Federal Practice, supra, (1964 Ed) 3023-3025 (§ 22.08); 2 Barron and Holtzoff (1961 Ed) 229 (§ 551).

The result is complete uncertainty over an increasingly urgent and important question of federal jurisdiction. That question should be resolved by this Court.

c. The reference by the court below to state law to determine who are "adverse claimants" under 28 USC § 1335 rested upon its narrow construction, unsupported by applicable authority,<sup>7</sup> of a statute which expressly confers jurisdiction over the interests of those who "may" as well as those who do claim policy benefits. It imposed the same construction upon the phrase "persons

7. *Brillhart v. Excess Ins. Co. of America*, (1942) 316 US 491 at 496, cited by the court in support of its conclusion, was a declaratory judgment suit seeking to determine the plaintiff's liability on a reinsurance contract which was already the subject of litigation in the state court in garnishment proceedings brought by a judgment creditor. This Court held that whether a direct action will lie is a question of state law. It did not hold that the availability of a direct action is essential to interpleader jurisdiction.

having claims against the plaintiff" in Rule 22(1) FRCP.<sup>8</sup> Its decision, if permitted to stand without review, cannot fail to encourage a narrow view of federal interpleader which will greatly reduce its utility and does not reflect the views of this Court. *Texas v. Florida*, (1939) 306 US 398 at 405-407.

### CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN GORDON GEARIN

*Counsel for Petitioners*

July 25, 1966

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8. *Security Trust & Savings Bank of San Diego v. Walsh*, (CCA 9 1937) 91 F2d 481, cited by the court in support of its construction of the rule, was decided a year before the rules went into effect.

**APPENDIX A****28 USC § 1335 (c. 646, 62 Stat. 931):**

(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of \$500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of \$500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of \$500 or more, if

(1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if (2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.

(b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

**Rule 22, Federal Rules of Civil Procedure:**

(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counter-claim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(2) The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by Title 28, USC, §§ 1335, 1397 and 2361. Actions under those provisions shall be conducted in accordance with these rules.



## APPENDIX B

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

KATHRYN TASHIRE, EVA SMITH, HARRY  
SMITH, LILLIAN G. FISHER, BARBARA MC-  
GALLIAND, DORIS ROGERS, GAIL R. GREGG,  
RICHARD L. WALTON, heir of SUE M.  
WALTON, and DONALD WOOD,

*Appellants,*

No. 20,380

vs.

STATE FARM FIRE AND CASUALTY COM-  
PANY, and GREYHOUND LINES, INC.,

*Appellees.*

[June 30, 1966]

Appeal from the United States District Court  
for the District of Oregon

Before: BARNES and JERTBERG, Circuit Judges, and  
MATHES, Senior District Judge

MATHES, Senior District Judge:

This appeal from an interlocutory order of the United States District Court for the District of Oregon, refusing to dissolve a restraining order issued under 28 U.S.C. §2361, arises out of a California accident between an automobile driven by one Ellis D. Clark and a Greyhound Lines bus operated by one Theron Nauta. Following this accident Clark's insurer, appellee State Farm Fire and Casualty Company, instituted an "Action in the Nature of Interpleader" in the District Court, asserting Federal jurisdiction under 28 U.S.C. §§1332 and 1335, and naming as defendants the insured Clark, Greyhound Lines, bus driver Nauta, the owner of

Clark's vehicle, and thirty-five bus passengers or their personal representatives.

Appellee State Farm's complaint "in the nature of interpleader" [28 U.S.C. §1335(a)] alleges that the insurer is incorporated and has its principal place of business in the State of Illinois, and that defendants are citizens of various provinces of Canada and of states other than Illinois. The complaint further alleges that defendants are, or claim to be, injured as a result of the California collision between the Clark vehicle and the Greyhound bus, or otherwise have or claim to have, an interest in the automobile insurance policy issued by State Farm to Clark.

This policy provides for personal liability coverage for bodily injury limited to \$10,000 for each person and \$20,000 for each occurrence. Appellee State Farm also alleges that, at the time of filing of the complaint, at least four actions had already been commenced in the California courts against Clark and others, seeking recovery of total damages exceeding one million dollars, with additional suits anticipated; and that if the legal liability of the insured Clark for all or most of the injuries and deaths resulting from the accident were to be established, the amount of such liability would substantially exceed the policy limits.

Appellee State Farm deposited with the Clerk of the District Court the sum of \$20,000, representing the face amount of its policy to Clark, to be distributed by the Court to the extent needed to satisfy the claims of the defendants, subject to being reclaimed upon a finding that State Farm's coverage under the policy did not extend to Clark under the circumstances. However, State Farm does not admit any coverage under its policy or any liability on the part of its insured Clark. The prayer of the complaint is that the defendants who claim injury or damage be required to interplead and establish their respective claims, that an injunction issue restraining the parties from instituting or prosecuting any suits against Clark or State Farm in any

other State or Federal Court, and that State Farm otherwise be discharged from all liability and duties under the contract of insurance, including the duty to defend lawsuits against the insured Clark.

The District Court, upon motion of State Farm and after a hearing, issued an order under 28 U.S.C. §2361 restraining appellants and other defendants "from instituting or prosecuting any proceedings in any state or United States Court affecting the property or obligation involved in this interpleader action, and specifically against instituting or prosecuting any proceeding against the plaintiff [State Farm] or any of the defendants who may constitute the plaintiff's assured." Appellants moved to dissolve this restraining order. Their motion was denied, and this appeal followed.

After notices of appeal had been filed, the Court modified the restraining order to permit any defendant to file an action against the plaintiff, State Farm, or against any defendant, but at the same time continued the injunction in force as to all defendants "from further prosecuting any such actions . . . , and specifically against further prosecuting any proceedings against the plaintiff or defendants Ellis D. Clark, Greyhound Lines, Inc., or Theron Nauta."

This Court has jurisdiction to entertain this appeal by virtue of 28 U.S.C. §1292(a)(1), which permits appeals from interlocutory orders of the District Court "refusing to dissolve . . . injunctions." [See: *John Hancock Mut. Life Ins. Co. v. Kraft*, 200 F.2d 952 (2d Cir. 1953); *Missouri-Kansas-Texas R. Co. v. Randolph*, 182 F.2d 996 (8th Cir. 1950).]

Section 1335 of Title 28 of the United States Code provides in part that: "The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader . . . if (1) Two or more adverse claimants, . . . are claiming or may claim to be entitled . . . to any one or more of the benefits arising by virtue of any . . . policy . . . ." Whether or not an

insurance company is subject to claims within \$1335 is a question to be determined by State law. [See *Brillhart v. Excess Ins. Co.*, 316 U.S. 491, 496 (1942).]

State Farm's policy, attached to the complaint, provides that the insurer will "pay on behalf of the insured all sums which the insured shall become legally obligated to pay", but expressly limits this obligation with a "no action" clause specifying that: "No action shall lie against the company: . . . until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company."

Moreover, under the law of California where the accident occurred, and of Oregon where the insurance contract was entered, a direct action against the insurer is not allowable until after the claimant shall have secured a final judgment against the insured. [See: Calif. Ins. Code §§11580(b)(2), 11581; Oregon Revised Statutes §23.230.]

In states such as Louisiana, on the other hand, where direct action by an injured person against the insurer as "joint tort-feasor" is provided for by statute, interpleader jurisdiction can be sustained in the absence of a judgment against the insured, since the direct-action statute gives claimants against the insured the status also of claimants against the insurer. [See *Pan American Fire & Cas. Co. v. Revere*, 188 F.Supp. 474 (E.D. La. 1960).] The "direct-action" statutes thus serve to underscore the correctness of our view that, in a case such as that at bar, a party may not "claim to be entitled . . . to one or more of the benefits arising by virtue of any . . . policy" until after his claim against the insured has been reduced to final judgment. [See: *National Cas. Co. v. Ins. Co. of North America*, 230 F.Supp. 617 (N.D. Ohio 1964); *American Indemnity Co. v. Hale*, 71 F.Supp. 529 (W.D. Mo. 1947); *contra*, *Commercial Union Ins. Co. of New York v. Adams*, 231 F.Supp. 860 (S.D. Ind. 1964).]



It should also be noted that under Rule 22(1) of the Federal Rules of Civil Procedure, which applies to actions founded upon the diversity-of-citizenship provisions of 28 U.S.C. §1332. [see *Sec. Bank v. Walsh*, 91 F.2d 481 (9th Cir. 1937)], only "persons having claims against the plaintiff [insurer] may be joined as defendants and required to interplead . . . ." Which is to say that only persons having actionable [presently judiciable] claims against the plaintiff "may be . . . required to interplead." For the reasons already stated, then, with respect to their lack of status as "claimants" under 28 U.S.C. §1335, appellants cannot of course be said to be persons "having claims" against the insurer who may be joined as defendants and required to interplead under Rule 22(1).

Since appellants are not "claimants" within the jurisdictional requirements of 28 U.S.C. §1335, and are not "persons having claims against the plaintiff" within the permissive grant of Rule 22(1), the interlocutory order appealed from must be reversed, the restraining order issued under 28 U.S.C. §2361 must be dissolved, and this "action in the nature of interpleader" must be dismissed for lack of jurisdiction over the subject matter. [See: *Treines v. Sunshine Mining Co.*, 308 U.S. 66 (1939); Fed.R.Civ. P. 12(b)(1), 12(h)(2).]

The conclusion we have reached makes it unnecessary to consider other contentions, including those as to service of process. [See: 28 U.S.C. §§1397, 1655, 2361; Fed.R.Civ.P. 4(e), 22.]

For the reasons stated, the order appealed from will be reversed, with directions to the District Court to dissolve all restraining orders now in force and dismiss the action for lack of jurisdiction over the subject matter.

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**KATHRYN TASHIRE, et al.,**  
*Appellants,*

**vs.**

**STATE FARM FIRE AND CASUALTY  
COMPANY, AND GREYHOUND LINES,  
INC.,**  
*Appellees*

No. 20,380

**\* \* \* ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed with directions to the said District Court to dissolve all restraining orders now in force and dismiss the faction [sic] for lack of jurisdiction over the subject matter.**

**Filed and entered June 30, 1966**

## APPENDIX C

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

No. 18,313.

Underwriters at Lloyd's and  
Orion Insurance Co., Ltd., et  
al.,*Appellants,*

vs.

R. H. Nichols, et al.,

*Appellees.*} Appeal from the  
United States Dis-  
trict Court for the  
Eastern District of  
Arkansas.

[June 30, 1966.]

Before VOGEL, Chief Judge, MEHAFFY, Circuit Judge,  
and McMANUS, District Judge.

VOGEL, Chief Judge.

The sole issue involved in this appeal is whether the District Court erred in determining that it did not have jurisdiction over the subject matter of the complaint for interpleader filed in this case. The complaint was dismissed with prejudice by the District Court. We reverse.

Plaintiffs-appellants, all British insurance companies, issued certain policies of liability insurance to one Roy H. Sheffield, Jr., doing business as Dixie Flyers, which policies purported to indemnify Sheffield against liability from crop spraying operations which he carried on in the State of Arkansas. Appellants alleged that for

the policy period beginning June 22, 1965, and ending on June 22, 1966, the aggregate coverage provided to Sheffield by them was \$20,000 subject to a \$750 deductible for each and every property damage claim entered against Sheffield.

During the policy period, Dixie Flyers, through its employees, caused certain rice crops, on several occasions, to be sprayed with an herbicide which was dangerous to broad-leaved plants, including cotton. It is claimed that some of the herbicide fell or drifted onto cotton crops growing in fields adjacent to or in the vicinity of the rice fields that were sprayed. The growing cotton was allegedly damaged as a result. Because of the spraying operations, as found by the District Court,

“\* \* \* About 18 claims of cotton farmers for damages have been or will be made against Sheffield; the total claims are expected to amount to more than \$50,000.”

At the time of the filing of the instant cause of action two separate suits had already been commenced against Sheffield in the state courts of Arkansas because of the alleged damages caused by Sheffield's crop spraying activities. The aggregate of the amounts demanded in those two suits exceed \$25,000.

The actual and potential claimants for damages from Sheffield, all citizens of Arkansas, are defendants-appellees herein. Further defendants-appellees include Sheffield, Sheffield's employees and the owners of the rice lands to which the offending herbicide was applied.

Appellants sought to determine their liability, if any, on all claims and potential claims arising out of the crop spraying incidents by tendering \$20,000, the alleged amount of their insurance liability to Sheffield, into the registry of the District Court and by attempting to proceed in an interpleader action under Rule 22 of



the Federal Rules of Civil Procedure, 28 U.S.C.A.<sup>1</sup> Appellants, desiring to compel the litigation of all claims against Sheffield in this single action, also sought to enjoin the further prosecution of the two pending Arkansas state court suits and the initiation of additional state court actions. Appellants deny any liability on the part of Sheffield to the cotton growers and, alternatively, allege that if there was liability in excess of the policy coverages, that recovery should be prorated among the successful claimants from the \$20,000 tendered into court.

It is obvious that without the intervention of the appellants there would not be the requisite diversity of citizenship needed for federal court jurisdiction. Sheffield, all claimants and the other appellees are clearly citizens of Arkansas. It is also apparent that appellants would have no standing in the Arkansas state courts to assert their policy limitation defense until after individual judgments had been rendered against Sheffield exceeding the \$20,000 policy limits, since Arkansas has no direct action statute—i.e., a statute giving an injured party the right to proceed directly against the alleged tortfeasor's insurance company. Only where there is an unsatisfied judgment can the injured party proceed against the insurance company. Ark. Stat. Ann. §§66-4001, 66-4002 (1966 Replacement). Appellants fear that unless all claims are disposed of in this one federal action, they will perhaps be required to pay sums in

1. Rule 22 provides, in pertinent part:

"(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants.

"(2) The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by Title 28, U.S.C., §§1335, 1397, and 2361. Actions under these provisions shall be conducted in accordance with these rules. As amended Dec. 29, 1948, effective Oct. 20, 1949."

excess of policy limits. Appellants' reasoning is that after paying off initial successful claimants from the state courts and exhausting the available funds under the policy, they could possibly still be forced to pay later successful claimants on the theory that they, appellants, should have prorated the available funds among all claimants. Appellees do not dispute appellants' assertion that it is an open question under Arkansas law as to whether such additional liability would ensue when there are multiple claims growing out of the same coverage.

The District Court, in denying appellants' application for a preliminary injunction and in dismissing appellants' claims with prejudice, held that the court did not have jurisdiction over the instant dispute under Rule 22, set out at f.n. 1, *supra*; there being unliquidated tort claims involved. Since the claims were unliquidated, the lower court felt appellants were in no immediate danger of facing multiple liability so as to make Rule 22 applicable. This appeal followed.

Under interpleader, as most simply defined at 48 C.J.S., *Interpleader* §2, p. 38 (1947) one

"\* \* \* who owes or is in possession of money or property in which he disclaims any title or interest but which is claimed by two or more persons, prays that the claimants be compelled to state their several claims, so that the court may adjudge to whom the matter or thing in controversy belongs. The office or function of the remedy is to protect one against conflicting claims and double vexation with respect to one liability."

It might be beneficial at this point to briefly summarize the federal law of interpleader as it has developed over the past fifty years. On this subject see generally 2 Barron and Holtzoff, *Federal Practice and Procedure*, §§551 et seq. (Rev. Ed., 1961); 3 Moore's

Federal Practice, par. 22.01 et seq. (2d Ed., 1964); 6 Nichols, et al., *Cyclopedia of Federal Procedure*, §§22.01 et seq. (3d Ed., 1951); and the excellent series of articles written by Professor Zechariah Chaffee, Jr.<sup>2</sup> See, also, the scholarly discussion of the law of interpleader by then District Judge J. Skelly Wright in *Pan American Fire & Cas. Co. v. Revere*, E.D. La., 1960, 188 F.Supp. 474.<sup>3</sup>

Interpleader first originated in the old common law of interpleader but the primary development and principles of interpleader occurred in equity where the use of interpleader was most common. As the late Judge John Sanborn stated for this court in *Klaber v. Maryland Cas. Co.*, 8 Cir., 1934, 69 F.2d 934, 936-937:

"The essential elements of the equitable remedy of interpleader are: (1) The same thing, debt, or duty must be claimed by both or all the parties against whom the relief is demanded. (2) All their adverse titles or claims must be dependent, or be derived from a common source. (3) The plaintiff must not have nor claim any interest in the subject matter. (4) He must have incurred no independent liability to either of the claimants and must stand perfectly indifferent between them, in the position merely of a stakeholder. *Pomeroy's Equity Jurisprudence* (4th Ed.) vol. 4, §1322; *Wells, Fargo & Co. v. Miner* (C. C.) 25 F. 533. See, also, *Calloway v. Miles* (C.C.A. 6) 30 F.(2d) 14; *Connecticut General Life Ins. Co. v. Yaw* (D.C.) 53 F.(2d) 684."

2. Professor Chaffee's articles include the following: *Modernizing Interpleader*, 30 Yale L. J. 814 (1921); *Interstate Interpleader*, 33 Yale L. J. 685 (1924); *Interpleader in the United States Courts*, 41 Yale L. J. 1134, 42 Yale L. J. 41 (1932); *Federal Interpleader Act of 1936*, 45 Yale L. J. 953, 1161 (1936); *Federal Interpleader Since the Act of 1936*, 49 Yale L. J. 377 (1940); *Broadening the Second Stage of Interpleader*, 56 Harv. L. Rev. 541, 929 (1943).

3. Judge Wright now serves on the United States Court of Appeals for the District of Columbia.

These requisites, often given lipservice by the courts but frequently avoided as such, hampered the utility of the interpleader device.

Beginning in 1917 the United States Congress enacted the first of a series of interpleader acts. 39 Stat. 929 (1917). The initial act was amended in 1925<sup>4</sup> and was repealed and replaced in 1926. 44 Stat. 416 (1926). In 1936 a new interpleader act was passed. 49 Stat. 1096 (1936). The 1936 act was last amended in 1948 by the Judicial Code and Judiciary Act at the time when 28 U.S.C. was enacted into positive law. 62 Stat. 869 (1948). The act now appears in 28 U.S.C. §§1335, 1397 and 2361. These different acts varied from each other in certain respects but the culmination of these acts " \* \* \* extended the jurisdiction of the federal courts with respect to interpleader actions". 2 Barron and Holtzoff, *supra*, §551, at p. 229. In certain respects the 1926 act was narrower than the earlier 1917 act and later acts, but discussion of this point will be deferred until relevant, *infra*. It is not necessary to set out the full text of these acts since they are only collaterally relevant to this appeal.

Rule 22 of the Federal Rules of Civil Procedure, 28 U.S.C.A., set out at f.n. 1, *supra*, was promulgated in 1937 and stands as promulgated except that subparagraph (2) was amended, effective October 20, 1949, to reflect the passage of Title 28 U.S.C. into positive law. Professor Moore, in his treatise, notes that Rule 22 " \* \* \* provides the most modern and liberal method of obtaining interpleader to be found." 3 Moore, *supra*, par. 22.04 at p. 3007. By its own terms Rule 22 is intended to be "in addition to" statutory interpleader "and in no way supersedes or limits" remedies provided under statutory interpleader.

As already noted, the instant case arises under Rule 22 rather than under the 1948 statutory interpleader act. The 1948 act requires as a jurisdictional prerequisite "Two or more adverse claimants, of diverse citizenship",

4. 43 Stat. 976.



28 U.S.C. §1335 (a) (1). Herein all actual and potential claimants are from Arkansas, defeating jurisdiction of the instant controversy under the 1948 act. However, Rule 22 raises no jurisdictional problems in this regard. Since the Interpleader acts and Rule 22 are so similar in construction, case precedents arising under the various acts are certainly relevant to the instant dispute and will be discussed herein.

Appellees rely on the case of *Klaber v. Maryland Cas. Co.*, supra, as primary support for their proposition that Rule 22 is inapplicable herein. However, *Klaber* was decided under the 1926 interpleader act and for this reason the result therein is not necessarily binding under Rule 22. In *Klaber* this court refused to allow an interpleader proceeding which arose out of an automobile accident. Therein the insurance company involved attempted to join all potential claimants to determine its liability under the policy at issue. It was alleged by the company that the claims against its insured would exceed policy limits. At the time of the initiation of the interpleader action *Klaber* was the only injured party who had obtained a judgment against the insured. *Klaber's* recovery did not exceed the policy limits.

In *Klaber* this court stated, at page 939 of 69 F.2d:

"If the bill before us showed that the defendants other than *Klaber* were bona fide adverse claimants against the company within the meaning of the Interpleader Act, and that the company was a disinterested stakeholder, we would be inclined to hold that it might maintain this suit under the act. \* \* \*

\* \* \* \* \*

"We are convinced, however, that, under the allegations of the bill, *Klaber* was the only defendant who was an actual claimant, and that the other defendants are persons who may become claimants depending upon whether they succeed in procuring judgments against the assured or whether they do not.

\* \* \* \* \*

"Our conclusion is that the bill is not one which comes within the Interpleader Act, and that the court therefore was clearly without authority to enjoin Klaber from proceeding with his garnishment, and could not compel those defendants who were citizens of states other than Nebraska to interplead."

In *Klaber* we noted that under the 1917 interpleader act jurisdiction would lie where "\* \* \* two or more adverse claimants \* \* \* are claiming or may claim to be entitled to such insurance or benefits." 69 F.2d at 938, citing 39 Stat. 929. (Emphasis supplied). Very significantly the 1926 act did not contain the above italicized portion of the 1917 act and it was thus of much narrower scope. This was fatal to the insurance company in *Klaber*, which was faced with only contingent claims except for Klaber's judgment. Under the 1926 act interpleader could not lie, in effect, until potential tort claims had been liquidated to an extent whereby the value of such claims exceeded the available fund involved. Significantly, Rule 22, quoted in detail at f.n. 1, supra, applicable in this case, is similar to the 1917 act and much broader than the 1926 act in that interpleader will lie when potential "\* \* \* claims are such that the plaintiff is or may be exposed to double or multiple liability." Rule 22, Federal Rules of Civil Procedure, 28 U.S.C.A. (Emphasis supplied.) Thus it is clear from the language of Rule 22 that it is of greater applicability than the 1926 act under which *Klaber* arose. The insurance company in *Klaber* could have possibly saved its action under the wording of either Rule 22 or the 1917 act. Rule 22 arguably provides for interpleader jurisdiction even though potential tort claims, clearly recognizable though not yet liquidated, against the stakeholder have not been conclusively established. See, *A/S Kreditt Bank v. Chase Manhattan Bank*, S.D. N.Y., 1957, 155 F.Supp. 30, 33-34, aff'd, 2 Cir., 1962, 303 F.2d 648, a case discuss-

ing the 1917 and 1926 interpleader acts and *Klaber* as they relate to the interpleader codification in the Judicial Code and Judiciary Act of 1948, *supra*, and Rule 22. The 1948 act restored the "may claim" clause of the 1917 act.

In discussing the *Klaber* precedent and its applicability under the 1948 act and Rule 22, Professor Moore makes the following observations in 3 Moore, *supra*, par. 22.08 [1] at pp. 3024-3025:

"\* \* \* The circuit court of appeals dismissed the bill [for interpleader] on the grounds: (1) that complainant was an interested party inasmuch as it sought in other actions to defeat or diminish claims of injured persons that were being sued on in actions against the insured [on this point see footnote 5,

5. In *Klaber* we had stated at page 939 of 69 F.2d:

"We are also convinced that the company is not a disinterested stakeholder. It does not aver that it is. The facts pleaded show that it is not. It admits no rights in the defendants other than *Klaber* to the fund, and no liability of either itself or its assured to them. It occupies a position of active hostility to all defendants except *Klaber*, and must, if it can, prevent their ever obtaining any claims against the fund. See *Stusser v. Mutual Union Ins. Co.*, 127 Wash. 449, 221 P. 331, 333; *Pope v. Missouri Pac. Ry. Co.* (Mo. Sup.) 175 S.W. 955, 957. Moreover, if it succeeds in defeating their claims against its assured, there will be about \$6,000 left in the registry of the court after payment of the *Klaber* judgment, to which the company alone will have a claim."

This point is not directly at issue in the instant case. We do note, however, from an historical standpoint, that in strict common law interpleader, the plaintiff had to be a completely disinterested stakeholder. See *Klaber v. Maryland Cas. Co.*, *supra*, at p. 937 of 69 F.2d. A bill in the nature of interpleader developed to cover the situation where a plaintiff seeking interpleader denied any liability (making him at least technically an interested party) yet was willing to tender the entire amount of available money into court and abide by the court's decision. The 1936 interpleader act was the first to specifically encompass, by its terms, bills in the nature of interpleader. Today 28 U.S.C. §1335 (a) specifically contemplates bills "in the nature of interpleader". The same is true of Rule 22 whereunder it does not matter that "plaintiff avers that he is not liable in whole or in part to any or all of the claimants." Interpleader still lies. Thus *Klaber's* holding as to interested parties being unable to seek interpleader is no longer the law since *Klaber* was decided in 1934 prior to the passage of the 1936 act. See, e.g., *New York Life Ins. Co. v. Lee*, 9 Cir., 1956, 232 F.2d 811, 814; *Standard Sur. & Cas. Co. v. Baker*, 8 Cir., 1939, 105 F.2d 578, 580; *Pan American Fire & Cas. Co. v. Revere*, *supra*, at pages 477-479 of 188 F.Supp.; *John Hancock Mut. Life Ins. Co. v. Kegan*, D.C. Md., 1938, 22 F.Supp. 326. See, also, 3 Moore, *supra*, par 22.07 [1] at pages 3019-3020; Chaffee, *The Federal Interpleader Act of 1936*: I, 36 Yale L. J. 963, 970-971.

infra]; and (2) that there was only one actual claimant against the surety company, namely, Klaber. The first ground for dismissal is probably obviated by the 1936 and 1948 Acts, which expressly authorize suits in the nature of interpleader. The second ground for dismissal seems sound under the 1936 Act, inasmuch as there was no 'may claim' clause in that Act. The omission of the 'may claim' clause made statutory interpleader more restrictive and hence less practical than non-statutory interpleader under paragraph (1) of Rule 22. It is, therefore, not surprising to find some judicial reluctance to deny relief where the possibility of multiple claimants was manifested." [Original footnote citations omitted.]

See, also, Chaffee, Federal Interpleader Act of 1936: II, 45 Yale L. J. 1161, 1163-1167. Professor Moore would seem to be eminently correct in his conclusions.

The court below did not accept appellees' position herein and base its decision on *Klaber*, stating that because of

"The liberalization of federal interpleader jurisdiction and practice effected by the promulgation of Rule 22, effective in 1938, and by the rewriting of the Federal Interpleader Act in connection with the overall revision of the Judicial Code in 1948, \* \* \*

\* \* \* \* \*

\* " \* \* \* the Court recognizes that the decision of the Court of Appeals for this Circuit in *Klaber v. Maryland Casualty Co.*, 8 Cir., 69 F.2d 934, which the Court at one time felt tentatively was a bar to the granting of the relief here sought, cannot be considered as such."

The court also discounted the precedent of *American Indemnity Co. v. Hale*, W.D.Mo., 1947, 71 F.Supp. 529,



on the grounds that the judge in *Hale* was relying on *Klaber*. In spite of this determination, however, the court below held:

"It may be conceded that both the Act and Rule 22 are to be construed liberally. It may be conceded also that in instances the statute and the Rule give a choice of forum to an interpleader and may permit the litigation in federal courts of cases which would not be heard there ordinarily. The Court does not believe, however, that federal interpleader jurisdiction extends so far as to cover a situation where, as here, the claims with which a liability insurer is faced are not only potential but are also doubly contingent. As of this time the liability of plaintiffs to the cotton farmers is secondary, and is contingent, first, upon the liability of Sheffield being established, and, second, upon it developing that he is not financially able to satisfy judgments against him or to reduce them to an aggregate sum within plaintiffs' policy limits. From what has been said, it follows that the complaint must be dismissed."

In arriving at its decision the trial court discredited a contrary decision in *Pan American Fire & Cas. Co. v. Revere*, supra, where interpleader jurisdiction was found to exist. The *Revere* decision was accepted and followed in *Commercial Union Ins. Co. v. Adams*, S.D. Ind., 1964, 231 F.Supp. 860, 863-864. *Revere* arose in Louisiana and involved a discussion of both Rule 22 and the 1948 interpleader act, although Rule 22 was ultimately held not to be available therein because of certain venue and service problems not present herein. However, Judge Wright very thoroughly delved into and discussed Rule 22 and its various ramifications. The court below refused to follow *Revere* since "Arkansas has no direct action statute comparable to that of Louisiana", meaning that potential claims against appellants herein are doubly contingent, depending ultimately

upon Sheffield's liability and his inability to financially meet all claims recovered by various appellees against him. With a direct action statute, of course, an insurer would be subject to suit immediately rather than having suit deferred until after a judgment had been rendered against its insured and returned unsatisfied. In the latter situation the chances of suit being brought against an insurer are allegedly more remote.

We do not feel that the use of interpleader should or does depend upon the existence or absence of a direct action statute. As aptly noted by Judge Wright in the *Revere* case, at page 480 of 188 F. Supp.:

"But the requirement [of Rule 22 of exposure to multiple liability as a prerequisite for interpleader] is not a strict one. Nor could it be as part of a Rule that is said to provide 'the most modern and liberal method of obtaining interpleader to be found.' [3 Moore, supra, at par. 22.04 [1], p. 3007.] *The key to the clause requiring exposure to 'double or multiple liability' is in the words 'may be.' The danger need not be immediate; any possibility of having to pay more than is justly due, no matter how improbable or remote, will suffice.* At least, it is settled that an insurer with limited contractual liability who faces claims in excess of his policy limits is 'exposed' within the intendment of Rule 22, [citing this court's decision in *Standard Sur. & Cas. Co. v. Baker*, 8 Cir., 1939, 105 F.2d 578] and we need go no further to find the requirement satisfied here." (Emphasis supplied.)

Judge Wright states further at page 480 of 188 F. Supp.:

"The present law, then, is that the only equitable ground necessary for interpleader, whether the plaintiff is a disinterested stakeholder or not, is exposure to double or multiple vexation. But, of course, this does not mean that every person threatened

with a multiplicity of suits is entitled to interplead. The function of interpleader is to rescue a debtor from *undue* harassment when there are several claims made against the *same fund*."

In the *Revere* case Judge Wright does state at pages 482-483 of 188 F.Supp.:

"\* \* \* But, in any event, prematurity [i.e., in seeking interpleader for unliquidated tort claims] is no defense under the peculiar Louisiana law which allows a direct action against the automobile liability insurer."

A reading of Judge Wright's entire opinion, however, clearly shows the mention of the Louisiana direct action statute to be surplusage and not necessary to the decision in that case. For example, just prior to the reference to the direct action statute it is stated at page 482 of 188 F.Supp.:

"\* \* \* Indeed, under the 'may be exposed' clause of Rule 22 and the 'may claim' clause of the Interpleader Act, it would not seem to matter how remote the danger might be."

Professor Chaffee, in *The Federal Interpleader Act of 1936*: II, *supra*, says at page 1166 of 45 Yale L. J. that:

"\* \* \* a bill in the nature of interpleader should lie even before any judgment. It is sufficient for the court to assure itself that the danger of multiplicity of suits is genuinely present. The seriousness of the accident and the obvious good faith of the victims in seeking damages meet this requirement. The victims are 'claiming to be entitled to such (insurance) money' within paragraph (a) (i) of the Act of 1936,

at least after they file suits against the assured. *It is true that the victims technically have no cause of action against the insurance company until judgment, and only against the assured till then; but substantially they are all seeking the insurance money from the start.* The company's obligation to defend and its limited duty to pay give it a vital interest in every tort action. It is no interloper in asking a unification of the numerous tort actions brought against the assured. Its request benefits the claimants as well as itself. Instead of a haphazard looting of a fund by the first comers, a bill in the nature of interpleader filed before numerous judgments have ripened assures a fair share of the insurance money to each victim and conforms to the principle, 'Equity is equality.' " (Emphasis supplied.)

His remarks, although directed to the 1936 interpleader act, show that the presence or non-presence of a direct action statute certainly is far from conclusive in any interpleader action, including one under Rule 22.

We find unpersuasive the case of *National Cas. Co. v. Insurance Co. of North America*, N.D. Ohio, 1964, 230 F.Supp. 617, 620, wherein it is stated, without cogent reasons, that the direct action statute was a crucial factor in *Revere*. In *Commercial Union Ins. Co. v. Adams*, supra, a case coming out shortly after *National Cas. Co.*, it is noted very simply at page 863 of 231 F.Supp. that *Revere* clearly stands for the proposition that:

"\* \* \* interpleader may be resorted to by an insurance carrier when the adverse claims are unliquidated tort claims against its assured."

See, also, *Standard Sur. & Cas. Co. v. Baker*, 8 Cir.; 1939, 105 F.2d 578. In *Adams*; no mention is made of the direct action statute involved in *Revere*. No such statute



is present in *Adams*, yet interpleader is permitted therein.

Clearly, then, the existence of a direct action statute is not conclusive as to whether or not interpleader will lie. Herein appellants have already been exposed to two claims totalling over \$25,000 in the Arkansas state courts. Further, the District Court found—conservatively, we think—that appellants will eventually have to face up to at least 16 additional claims and \$25,000 of additional potential liability over and above the current amounts being sought in the state courts. Even the existing state court actions would more than exhaust policy coverages if Sheffield should be held liable for the crop spraying damages up to the extent claimed, even without additional claims being brought. Clearly, the liberal interpretation of interpleader under Rule 22 should govern in this situation to prevent appellants from facing at worst multiple liability and at best multiple vexation. The facts, as disclosed by the record, belie the District Court's reasoning that any liabilities of appellants are doubly contingent, depending on ultimate judgments being rendered against an insolvent Sheffield. The threat of multiple liability is very real and imminent and interpleader should lie herein.

The late District Judge Lemley, in *Tollett v. Phoenix Assur. Co.*, W.D. Ark., 1956, 147 F.Supp. 597, 605, spoke of the 1948 interpleader act as follows:

“\* \* \* The Federal Interpleader Act, 28 U.S.C.A. §1335, which is a remedial statute and to be liberally construed, was designed not only to protect stakeholders from double or multiple liability but also to protect them from the trouble and expense of double or multiple litigation. *Sanders v. Armour Fertilizer Works*, 292 U.S. 190, 54 S.Ct. 677, 78 L.Ed. 1206; *Metropolitan Life Insurance Co. v. Segaritis*, D.C.Pa., 20 F.Supp. 739; *Massachusetts Mutual Life Insurance Co. v. Weinress*, D.C.Ill., 47 F.Supp. 626; and *Mallonee v. Fahey*, D.C.Cal., 117 F.Supp. 259.”

His remarks are applicable to the very liberal Rule 22 which is involved herein. See generally the notes of the Advisory Committee on Rules following Rule 22 of the Federal Rules of Civil Procedure, 28 U.S.C.A. We are in accord with the statement of the Third Circuit in *B. J. Van Ingen & Co. v. Connolly*, 3 Cir., 1955, 225 F.2d 740, 744, when it speaks " \* \* \* of the normal duty of a district court to permit interpleader liberally to relieve parties of the hazards and vexations of conflicting claims against them." See, also, *Bierman v. Marcus*, 3 Cir., 1957, 246 F.2d 200, 203; certiorari denied, 356 U.S. 933, 78 S.Ct. 774, 2 L.Ed.2d 762. We hold interpleader to be justified in the present situation.

For reasons set out in this opinion, the judgment of the District Court is reversed and the cause is remanded with directions to reinstate appellants' complaint.

McMANUS, District Judge, concurs and emphasizes that the result is in keeping with the spirit of the Rules, in particular Rules 2, 20(a) and 22, Federal Rules of Civil Procedure, 28 U.S.C.A., which must be construed in conjunction with 28 U.S.C.A. §1335.

A true copy:

Attest:

*Clerk, U. S. Court of Appeals, Eighth Circuit.*

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**DEC 7 1966**

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**No. 391**

**STATE FARM FIRE AND CASUALTY COMPANY and**  
**GREYHOUND LINES, INC.,**  
*Petitioners,*

**vs.**

**KATHERINE TASHIRE, EVA SMITH, HARRY SMITH,**  
**LILLIAN G. FISHER, BARBARA McGALLIAND, DORIS**  
**ROGERS, GAIL R. GREGG, RICHARD L. WALTON, heir**  
**of SUE WALTON, and DONALD WOOD,**  
*Respondents.*

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**PAGE**

**In the Supreme Court  
of the United States**

OCTOBER TERM, 1966

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No. 391

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**STATE FARM FIRE AND CASUALTY COMPANY and  
GREYHOUND LINES, INC.,**  
*Petitioners,*

*vs.*

**KATHERINE TASHIRE, EVA SMITH, HARRY SMITH, LILLIAN  
G. FISHER, BARBARA McGALLIAND, DORIS ROGERS, GAIL R.  
GREGG, RICHARD L. WALTON, heir of SUE WALTON, and  
DONALD WOOD,**  
*Respondents.*

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**PETITIONERS' BRIEF**

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**OPINION BELOW**

The District Court did not issue an opinion. The opinion of the Court of Appeals (R 168) is reported at 363 F2d 7.

**JURISDICTION**

The judgment of the Court of Appeals was entered on June 30, 1966 (R 173). Petitioners did not petition for rehearing. Their petition for a writ of certiorari was filed July 28, 1966 and was granted October 10, 1966 (R 174). The jurisdiction of this Court is invoked under 28 USC § 1254(1).

## **STATUTE AND RULE INVOLVED**

The statute involved is c. 646, 62 Stat. 931, 28 USC § 1335 (the Federal Interpleader Act), printed in Appendix A, *infra* 43.

The federal rule involved is Rule 22 of the Federal Rules of Civil Procedure, printed in Appendix B, *infra* 45.

## **QUESTIONS PRESENTED**

1. Whether the District Court had jurisdiction under 28 USC § 1335 (the Federal Interpleader Act) over the subject matter of a casualty insurer's action to determine its insured's liability for unliquidated claims, far exceeding the policy limits, of persons of diverse citizenship arising out of a multiple-claim catastrophe, and the claimants' respective rights to the proceeds of the policy.

2. Whether the District Court had jurisdiction over the subject matter of the action under Rule 22 (1) of the Federal Rules of Civil Procedure, there being diversity of citizenship between the insurer and all defendants.

## **STATEMENT**

### **1. The Nature of the Action**

This is an action in the nature of interpleader filed on January 22, 1965 by petitioner State Farm Fire and



Casualty Company, an Illinois corporation doing business in Oregon and having its principal place of business in Illinois. In its complaint, State Farm sought a determination that it was not liable under the terms of a policy issued in Oregon to extend coverage to its named insured, a citizen of Oregon who was driving a pickup truck which collided with a Greyhound bus near Redding, California on September 19, 1964. Alternatively, it sought an adjudication of defendants' claims against its insured for injuries, deaths and property damage resulting from the accident in amounts far exceeding the policy limits of \$20,000, which sum was deposited conditionally with the Clerk of the Court. Joined as defendants were the insured driver and the owner of the pickup truck, the bus company (petitioner Greyhound Lines, Inc.) and its driver, and the 35 bus passengers (or their survivors). The defendant bus driver and passengers were alleged to have been or to have claimed to be injured in the accident. Two of the defendants were alleged to be survivors of persons whose deaths may have resulted from the accident.

The complaint alleged that the defendants were citizens of Oregon, California, Washington, South Dakota, Montana and Canada. Consequently, there was diversity of citizenship between State Farm and all of the defendants and among the defendants themselves.

The jurisdiction of the District Court was invoked under 28 USC § 1335 (the Federal Interpleader Act) and § 1332 (diversity of citizenship) (R 1-6).

## **2. The Interpleader Allegations of the Complaint**

The complaint alleged:

- a. State Farm believed there was neither coverage nor any duty to defend the driver, because the pickup truck was being used in the business of its owner at the time of the accident (R 5);
- b. At least four actions for damages totaling more than \$1,110,000 had been filed against the driver and others in California state courts, and many other claims had been asserted against the driver and other lawsuits threatened (R 4);
- c. State Farm was not authorized to admit the driver's liability for the accident (R 5);
- d. The amount of liability for injuries and deaths in the accident, if established against an insured, would substantially exceed the policy limits (R 5); and
- e. If the court should determine that there was coverage, State Farm would relinquish its claim to the fund created by its deposit to the extent necessary to satisfy defendants' claims (R 5).

### **3. The Prayer for Relief**

State Farm prayed for a decree adjudicating that it need not extend coverage to the driver; in the alternative, it sought an order of interpleader determining that the appropriate defendants were adverse claimants to the fund and ordering those claiming injury or damage to interplead and establish their claims. It also prayed for an adjudication that its deposit of the policy limits discharged its responsibilities under the policy, including the obligation to defend pending and future actions, and for an injunction restraining all parties from instituting or prosecuting any other proceedings in any other court against State Farm or the driver (R 5-6).

### **4. Proceedings in the District Court**

An order was entered on January 22, 1965 requiring defendants to show cause why they should not be restrained from instituting or prosecuting suits in state or federal courts affecting the property or obligation involved in the action, and specifically suits against State Farm and its named insured (R 14).

On May 3, 1965 an order was entered under 28 USC § 2361 temporarily restraining the defendants (except one Gladys Hart, who had not yet been served) from instituting or prosecuting proceedings in any state or federal court affecting the property or obligation involved

in the action and specifically proceedings against plaintiff or defendants who might constitute its insureds (R 112-113).

On May 17 and 21, 1965 the defendants who are respondents in this Court moved for an order dissolving the restraining order and dismissing the action on the ground that the court lacked "jurisdiction of the parties" (R 146-147).<sup>1</sup> Their motions were denied on June 1, 1965 (R 149-150). Interlocutory appeals were taken from that order on June 30, 1965 (R 150-151; 152). The Court of Appeals had jurisdiction under 28 USC § 1292.

### **5. Proceedings in the Court of Appeals**

The Court of Appeals did not reach and did not decide the question of personal jurisdiction which was the only subject of the appeal. In its opinion of June 30, 1966, it held, on its own motion,<sup>2</sup> that the District Court lacked jurisdiction over the subject matter of the complaint; that persons having unliquidated tort claims against the insured driver for more than the policy limits arising out of the accident were not "adverse claimants" to benefits of the policy under 28 USC § 1335(a)-(1) or "persons having claims" against the insurer under Rule 22(1) FRCP, because they could not, under

1. The Canadian defendants had been served by registered mail (R 73-86), which respondents contended was insufficient.

2. See 1 Moore's Federal Practice (2d Ed 1964) 609-611 (§ 0.60).



the terms of the policy and the law of California and Oregon, sue the insurer before reducing their claims to judgment (R 168-172). It reversed the order appealed from, with instructions to dismiss the action for lack of jurisdiction over the subject matter (R 173).

Petitioners petitioned for certiorari, citing the contradictory decision of the Eighth Circuit in *Underwriters at Lloyd's v. Nichols*, (CA 8 1966) 363 F2d 357. The petition was granted on October 10, 1966 (R 174).<sup>3</sup>

### SUMMARY OF ARGUMENT

1. The question to be decided is whether, in the absence of a local direct action statute, a liability insurer can proceed in federal court to interplead persons whose unliquidated tort claims against its insured arising out of a single disaster far exceed the policy limits. Under modern conditions the question is of increasing importance, since serious problems arise when, as frequently happens, persons from various states having unliquidated claims for death and injuries look for satisfaction

3. On February 12, 1965 petitioner Greyhound Lines, Inc. moved to dissolve the order to show cause and dismiss the action for lack of jurisdiction (R 95-96). However, actions were commenced against Greyhound in California, Oregon and Washington for injuries arising out of the accident, and more were threatened (R 104-105). It became apparent that this action would provide a convenient proceeding in which to resolve some or all of the claims against Greyhound. Consequently, Greyhound withdrew its motion (R 98), and on March 25, 1965 it filed an answer and cross claim against its co-defendants seeking a determination that it was not responsible for the accident (R 101-106). It joined State Farm in resisting respondents' appeal to the Court of Appeals.

to the limited proceeds of a single liability insurance policy.

2. The history of federal interpleader is one of expanding jurisdiction for the protection of parties to important classes of interstate controversies. Each of the successive statutes has enlarged the interpleader jurisdiction of federal courts to meet the needs of a modern industrial nation; the historic boundaries of equitable interpleader as well as limitations contained in the statutes of 1917 and 1926 have been eliminated in subsequent legislation, culminating in the Act of 1948.

a. The Act of 1917 included within the term "adverse claimants" all those who "are claiming or may claim" the policy proceeds. Because there was congressional objection to permitting interpleader jurisdiction in cases where there was only "the possibility of claims" by two or more persons, the phrase "may claim" was dropped from the law by the 1925 amendments and the 1926 Act. It was restored in 1948, after two federal courts had declined to exercise interpleader jurisdiction over persons holding unliquidated tort claims, one on the precise ground that the words "may claim" had been deleted from the law in 1925. The restoration of the "may claim" phrase in 1948 restored the broader base of the 1917 Act and clearly embraces the present action.

b. Interpleader under Rule 22, Federal Rules of Civil Procedure, is of equal or broader scope, since it permits the free joinder of competing claims in the alternative, irrespective of the restrictions of former equity practice. It permits the joinder of all claims by which the plaintiff is or "may be" exposed to multiple liability, which clearly includes the case of the casualty insurer who is faced with unliquidated claims in excess of the policy limits.

c. Interpleader jurisdiction under Rule 22 was sustained in *Underwriters at Lloyd's v. Nichols*, supra, (CA 8 1966) 363 F2d 357, and the considerations of law and policy which support that decision are of controlling weight. The effectiveness of interpleader to protect important interests of the claimants, the insured, the insurer and the courts make the jurisdiction desirable, and the terms of the Act and the rule and their history make the presence or absence of a direct action statute irrelevant to the question of jurisdiction. Indeed, the dangers to the parties and the resulting need for interpleader are accentuated by the fact that the claims have not been reduced to judgment. The Act should not be given a narrow construction to exclude cases to which it fairly applies.

3. The decision of the court below was an incorrect construction of the Act and of Rule 22, because it makes

the availability of federal interpleader jurisdiction one which varies from state to state depending upon the presence of local direct action statutes. The Interpleader Act and the diversity jurisdiction which makes Rule 22 applicable are nationwide in their operation and were intended to be uniform in their application, unaffected by local law.

4. The recognition of interpleader jurisdiction in this case is responsive to a critical need for relief. It secures for the claimants a uniform determination of their respective claims and a fair proration of the policy proceeds. It protects the insured against disproportionate settlements and promotes general settlements which will protect him from excess judgments. It protects the insurer from multiple litigation and the hazard of multiple liability growing out of uncertain and conflicting obligations to the insured and the claimants. It protects the courts from the burden of multiple litigation and the risk of conflicting decisions of common questions of fact and law.

5. The recognition of interpleader jurisdiction in this case does not invade any interest of the tort claimants. The personal injury suits can be tried by a jury as of right in the second stage of the proceeding, and the statutory limitations on venue and provisions for transfer prevent unreasonable inconvenience to the parties.



6. The district court had jurisdiction to enjoin the prosecution of conflicting claims against the insurer or the insured in other courts, and its exercise was essential to effective interpleader relief.

## ARGUMENT

### I.

#### Introduction

This case involves 35 claims for personal injuries and death which arose out of a truck-bus collision, engulfing the limits of the \$20,000 liability policy which State Farm had issued to the driver of the truck. The claimants are citizens of five different states and the Dominion of Canada. The action seeks to determine coverage and to interplead all claimants to establish their claims and prorate the policy proceeds among those who succeed in doing so.

The case presents no jurisdictional question concerning the citizenship of the parties. There is diversity of citizenship between State Farm and all defendants and among the defendants themselves.<sup>4</sup> The question is whether, in the absence of a local direct action statute, a liability insurer can interplead persons whose unliquidated tort claims against its insured arising out of a single disaster far exceed the policy limits. The under-

<sup>4</sup> supra, 3-4. See *Haynes v. Felder*, (CA 5 1957) 239 F2d 868.

lying questions are whether such actions improperly encroach upon the trial of individual personal injury suits in state courts, or whether the assumption of federal jurisdiction is not justified and necessary because separate proceedings in state court prejudice the interests of citizens of different states.

The question is important, not only because modern society is characterized by complex activities having the capacity to cause injury and death to hundreds or thousands of people,<sup>5</sup> but also because relatively common occurrences, such as the automobile accident involved in this case, frequently involve the interests of persons who are citizens of several states. In the common case where persons having injury and death claims are destined to look for satisfaction to the limited proceeds of a liability insurance policy, serious problems face them and the parties to the policy if the claims must be tried separately in different courts applying diverse rules and standards.

"Joinder in a single suit is especially desirable when the multitude are seeking to divide a fund or a limited liability. Here the usual disadvantages of multiplicity of suits are greatly aggravated. The objection to many separate suits is not merely the vexation and expense to the adversary of trying the same question over and over. In addition there is danger

5. E.g., the explosion at the Indiana State Fair Grounds in Indianapolis which was involved in *Commercial Union Insurance Co. of New York v. Adams*, (DC SD Ind 1964) 231 F Supp 860 at 861:

"\* \* \* [M]ore than seventy persons were killed and some three hundred or more injured, many severely, \* \* \*"

that the aggregate of the separate jury verdicts might exceed the limit of liability, and also it is impossible to make a fair distribution of the fund or limited liability to all members of the multitude except in a single proceeding where the claim of each can be adjudicated with due reference to the claims of the rest. The fund or limited liability is like a mince pie, which can not be satisfactorily divided until the carver counts the number of persons at the table. \* \* \* Chafee: *Bills of Peace with Multiple Parties*, 45 Harv L Rev 1297 at 1311 (1932).

## II.

The history of the Federal Interpleader Act and its relationship to Rule 22 FRCP establish that the District Court had jurisdiction over the subject matter of the action.

### a. The Interpleader Acts.<sup>6</sup>

Since the first Interpleader Act was enacted in 1917,<sup>7</sup> statutory interpleader in federal courts has developed into a broad and effective remedy for the protection of the parties to important classes of interstate controversies. The 1917 and 1926 statutes were of limited scope (except for the availability of extraterritorial service);<sup>8</sup> however, the historic limitations of equitable

6. Material parts of the 1917, 1925, 1926 and 1936 statutes are set forth in Appendix C, *infra* 46-50. See generally 3 Moore's Federal Practice (2d Ed 1964) 3014-3018 (§ 22.06); Chafee, *The Federal Interpleader Act of 1936: I, II*, 45 Yale L J 963, 1161 (1936); Anno: 106 ALR 626 (1937); *Underwriters at Lloyd's v. Nichols*, *supra*, (CA 8 1966) 363 F2d 357.

7. c 113, 30 Stat 929, *infra* 46.

8. *Sanders v. Fertilizer Works*, (1934) 292 US 190 at 199-200.

interpleader which survived them<sup>9</sup> have been progressively eliminated by subsequent legislation. The modern statutory action is almost wholly free from those limitations,<sup>10</sup> as well as the territorial restrictions on jurisdiction which otherwise inhere in a federal system. The right to relief under the statute is absolute if the statutory elements are shown to exist.<sup>11</sup>

The Interpleader Act of 1917 was the response of Congress<sup>12</sup> to *New York L. Ins. Co. v. Dunlevy*, (1916) 241 US 518 in which the Court held that an interpleader judgment adjudicating the claims of rival claimants to the benefits of an insurance policy who resided in different states was not entitled to full faith and credit in the absence of personal jurisdiction over the claimants. In *Dunlevy*, the insurer had to pay the policy benefits twice, since the interpleader adjudication of the Pennsylvania state court did not protect it against a later decision in favor of a non-resident claimant who had stayed out of the interpleader proceeding.<sup>13</sup>

9. Described in *Klaber v. Maryland Casualty Co.*, (CCA 8 1934) 69 F2d 934 at 936-937. See also 4 Pomeroy's Equity Jurisprudence, (5th Ed 1941) 906 (§ 1322); 3 Moore's Federal Practice (2d Ed 1964) 3005-3006 (§ 22.03).

10. 2 Barron and Holtzoff, Federal Practice and Procedure (Rules Ed 1961) 230-233 (§ 551).

11. *Railway Express Agency v. Jones*, (CCA 7 1939) 106 F2d 341 at 344; *Maryland Casualty Co. v. Glassell-Taylor & Robinson*, (CCA 5 1946) 156 F2d 519 at 524-525; *American-Hawaiian Steamship Co. v. Bowring & Co.*, (DC SD NY 1957) 150 F Supp 449 at 453.

12. 3 Moore's Federal Practice (2d Ed 1964) 3016 (§ 22.06); Chafee, *Interstate Interpleader*, 33 Yale L J 685 at 722-723 (1924).

13. While a deposit of "property" into court will sustain *in rem* jurisdiction, *Dunlevy* held that depositing the amount of a contract debt does not change a personal claim into one *in rem*. See 3 Moore's Federal Practice (2d Ed 1964) 3015-3016 (§ 22.06).



*Dunlevy* has been criticized and distinguished,<sup>14</sup> and it was sought to be remedied by the Act of 1917, which allowed extraterritorial service in interpleader cases brought by insurance companies and fraternal benefit societies. Although equity practice continued to apply to actions under the Act,<sup>15</sup> the statute contained a broad and important provision: In statutory actions, "adverse claimants" who might be interpleaded included all persons who "are claiming or may claim" an interest in the proceeds of the policy.

The Act also contained special limitations. Only insurance companies and fraternal societies could utilize its provisions; the amount of the insurance had to be deposited in court; the statute did not authorize injunctive relief against the prosecution of competing claims to the proceeds in other courts; and it did not extend to actions in the nature of interpleader.

Under the 1925 amendments (c 317, 43 Stat 976) and the 1926 Act (c 273, 44 Stat 416),<sup>16</sup> casualty and surety companies were allowed to bring the statutory action, and the federal courts were given authority to enjoin other proceedings. However, in order to secure

14. Chafee, *Interstate Interpleader*, 33 Yale L J 685 at 711-715 (1924).

15. The 1917 and 1926 Acts "did not change the remedy, but enlarged the jurisdiction." *Klaber v. Maryland Casualty Co.*, supra, (CCA 8 1934) 69 F2d 934 at 937; 3 Moore's Federal Practice (2d Ed 1964) 3016 (§ 22.06).

16. Amendments to the 1917 Act were adopted in 1925, and a new Act was substituted in 1926. Material parts of both are set forth in Appendix C, infra, 47-48. The changes are summarized in 3 Moore's Federal Practice (2d Ed 1964) 3017 (§ 22.06).

passage of this liberalization of statutory interpleader, the "may claim" clause was deleted.<sup>17</sup>

The 1936 Act (c 13, 49 Stat 1096) remedied defects in the existing law, and interpleader jurisdiction was again expanded.<sup>18</sup> The new Act extended the remedy to any "person, firm, corporation, association or society" and granted jurisdiction over bills in the nature of interpleader. It also allowed defensive interpleader.<sup>19</sup>

The 1948 Act (c 646, 62 Stat 931, 28 USC § 1335)<sup>20</sup> conformed the diversity of citizenship provisions of the Act to § 1332 and restored the "may claim" phrase which had been dropped in 1925.<sup>21</sup>

"\* \* \* this is an important change which reverts back to the broader base of the 1917 Act, \* \* \*"  
3 Moore's Federal Practice (2d Ed 1964) 3025 (¶ 22.08)

17. "This change was made in order to secure the passage of the Act of 1926. Some of the members of the Senate subcommittee were not willing to permit the companies to obtain the jurisdiction of the District Court when there was only a possibility of claims by two or more persons." Chafee, *Interpleader in the United States Courts*, 41 Yale L J 1134 at 1163-1164 (1932).

See also *Klaber v. Maryland Casualty Co.*, supra, (CCA 8 1934) 69 F2d 934 at 938-939.

18. Material parts are set forth in Appendix C, infra 49.

19. See Chafee, *The Federal Interpleader Act of 1936: I, II*, 45 Yale L J 963 at 966-969, 1161 (1936). Chafee believed that the present action would lie under the 1936 Act as one in the nature of interpleader (45 Yale L J at 1165-1167).

20. Material parts are set forth in Appendix A, infra 43.

21. 3 Moore's Federal Practice (2d Ed 1964) 3018 (¶ 22.06). The statutory history shows that the terms of the new Judicial Code were the product of painstaking care by the most distinguished men in the field. Hearings of House Subcommittee No. 1 on the Judiciary (80th Congress) on H.R. 1600 and 2055 (1947) at 18-19; Hearings of Senate Subcommittee on the Judiciary (80th Congress) on H.R. 3214 (1948) at 14-17, 21-23.

The 1948 Act did not merely restore the original concept of "adverse claimants" to the law; that concept became applicable throughout the greatly expanded range of interpleader jurisdiction established by the intervening legislation. The Court cannot assume that Congress in adopting the 1948 Act was unaware of the history of this statutory language,<sup>22</sup> particularly in view of the extended consideration which its omission from the 1926 and 1936 Acts had received in the literature and in decisions which considered the question now before the Court, *infra* 19-20.

The Acts did not occupy the entire field of interpleader, and the general equity jurisdiction of the courts to grant such relief remained in cases having other jurisdictional bases.<sup>23</sup> In such cases, interpleader is available under Rule 22, Federal Rules of Civil Procedure,<sup>24</sup> which permits the joinder of all persons having claims against the plaintiff by which he is or may be exposed to multiple liability. Rule 22 is one of several devices of the Federal Rules designed to permit the free

22. See *Shamrock Oil Corp. v. Sheets*, (1941) 313 US 100 at 106-107.

23. *Security Trust & Savings Bank of San Diego v. Walsh*, (CCA 9 1937) 91 F2d 481 at 483. In *Texas v. Florida*, (1939) 306 US 398 at 407-408 the Court held that a bill in the nature of interpleader presents a "case" or "controversy" within Article III of the Federal Constitution.

24. Rule 22 (which is set forth in Appendix B, *infra* 45) expressly abandons the requirements of former equity practice. The Advisory Committee Notes of 1937 state that Rule 22 provides relief "along the newer and more liberal lines of joinder in the alternative."

"Paragraph (1) of Rule 22 provides the most modern and liberal method of obtaining interpleader to be found. \* \* \* 3 Moore's Federal Practice 3007 (2d Ed 1964) (§ 22.04)

joinder of parties and claims.<sup>25</sup> It permits the joinder of competing claims in the alternative to secure a binding declaration of the plaintiff's liability to all of the claimants. The rule is *in pari materia* with the statute;<sup>26</sup> in proceedings under it "All the technical restrictions which grew up around bills of interpleader and bills in the nature of interpleader \* \* \* have been entirely jettisoned."<sup>27</sup> It extends nonstatutory interpleader to any case in which claims are asserted against the plaintiff by which he "may be" exposed to multiple liability; the "possibility" of such liability (which unquestionably exists in the case of the casualty insurer faced with excess claims) is sufficient to invoke it.<sup>28</sup>

In summary, the history of federal interpleader is one of expanding jurisdiction for the protection of persons who are threatened with multiple litigation and the hazards of multiple liability by reason of their involvement in controversies having interstate elements.

25. See Rule 14 (third party practice), Rule 18 (joinder of claims), Rules 19 and 20 (joinder of parties), Rule 23 (class actions), Rule 24 (intervention), Rule 22(2) provides that the rules are applicable to proceedings under the Interpleader Act.

26. *Underwriters at Lloyd's v. Nichols*, supra, (CA 8 1966) 363 F2d 357 at 361.

27. 3 Moore's Federal Practice (2d Ed 1964) 3007-3008 (§ 22.04).

28. See *Pan American Fire & Casualty Company v. Revere*, (DC ED La 1960) 188 F.Supp 474 at 480:

"\* \* \* The key to the clause requiring exposure to 'double or multiple liability' is in the words 'may be.' The danger need not be immediate; any possibility of having to pay more than is justly due, no matter how improbable or remote, will suffice. At least, it is settled that an insurer with limited contractual liability who faces claims in excess of his policy limits is 'exposed' within the intendment of Rule 22, and we need go no further to find the requirement satisfied here."

See also *Standard Surety & Casualty Co. v. Baker*, (CCA 8 1939) 105 F2d 578 at 581-582, quoted *infra* 30.



It has grown because it is responsive to problems beyond the remedial powers of state courts which arise with increasing frequency in a complex society.

"Both the statute and the rule are intended to prevent multiplicity of actions and circuitry of litigation, thus protecting the stakeholder, and, by requiring all interested persons to come in and set up their claims in one case, to avoid the undue advantage that might otherwise be obtained by the creditor first obtaining judgment."<sup>29</sup>

The congressional purpose for 50 years has been to adapt and expand interpleader jurisdiction into a modern and effective tool to achieve these purposes, without artificial and irrelevant limitations. The present case, beyond the slightest question, falls within that purpose,

**b. The cases under the Interpleader Acts and Rule 22, Federal Rules of Civil Procedure.**

The only reported case prior to 1936 which considered the applicability of federal statutory interpleader to unliquidated tort claims exceeding a limited insurance fund was *Klaber v. Maryland Casualty Co.*, supra, (CCA 8 1934) 69 F2d 934, which held that the 1926 Act did not grant jurisdiction as to claims which had not been reduced to judgment and could not support a direct action against the insurer, because the phrase "may

<sup>29</sup> 2 Barron and Holtzoff, Federal Practice and Procedure (Rules Ed 1961) 227 (§ 551).

claim" had been deleted by the 1926 act.<sup>30</sup> Under the 1936 Act jurisdiction was denied, on the authority of *Klaber*, in *American Indemnity Co. v. Hale*, (DC WD Mo 1947) 71 F Supp 529 at 533-534. More recently, jurisdiction under Rule 22 has been denied by an Arkansas District Court in *Underwriters at Lloyd's v. Nichols*, (DC ED Ark 1966) 250 F Supp 837, rev'd (CA 8 1966) 363 F2d 357<sup>31</sup> and by an Ohio District Court in *National Casualty Co. v. Insurance Co. of North America*, (DC ND Ohio 1946) 230 F Supp 617. The cases since *Klaber* are ultimately based on a single ground: irrespective of statutory changes and the adoption of Rule 22, interpleading claimants with unliquidated tort claims under the Act (as in *Hale*) or Rule 22 (as in *Nichols* and *National Casualty Co.*) improperly interferes with the jurisdiction of the state courts.<sup>32</sup>

Contradictory decisions sustaining jurisdiction under Rule 22 have been rendered by Judge Skelly Wright in *Pan American Fire & Casualty Company v. Revere*,

30. It is the fair implication of *Klaber* that if this language had been retained in the 1926 Act, the decision would have been different. The court also held (at 939) that the suit must fail because the company was not a "disinterested stakeholder." The 1936 Act, as we have shown, supra 16, includes bills in the nature of interpleader.

31. Even though Judge Henley recognized that the law had changed since *Klaber* and *Hale* (at 839). Professor Moore says of the 1948 Act:

"\* \* \* the only other change is in the addition of the 'may claim' clause. But this is an important change, which reverts back to the broader base of the 1917 Act, and certainly eliminates the second ground for dismissal relied on by the *Klaber* case, which construed the 1926 Act that did not contain the 'may claim' clause." 3 Moore's Federal Practice (2d Ed 1964) 3025 (§22.08)

32. *Hale* (at 532-533), *Nichols* (at 840), *National Casualty* (at 620-621).

supra, (DC ED La 1960) 188 F Supp 474 and by Chief Judge Vogel in *Underwriters at Lloyd's v. Nichols*, supra, (CA 8 1966) 363 F2d 357. Jurisdiction under the 1948 Act was sustained by Judge Dillin in *Commercial Union Insurance Co. of New York v. Adams*, supra, (DC SD Ind 1964) 231 F Supp 860. The carefully written opinions in *Pan American* and *Nichols* show convincingly that *Hale* is inconsistent with the language and the history of the statute (especially the "may claim" phrase) and the rule<sup>33</sup> and is wholly inconsistent with the basic purposes of both.

The reasoning and principles which support these decisions are of controlling weight in the present case. It is not denied that actual judgments against the insured in excess of the policy limits will support interpleader jurisdiction, and in such cases the courts have extended their authority beyond considerations of priority in time in order to prorate the fund fairly.<sup>34</sup> Consequently, the question is not whether cases generally within the jurisdiction of the state courts should be transferred to federal courts; it is whether any meaningful limitation on a jurisdiction which is otherwise not questioned can be found in the fact that under local

33. In both, jurisdiction was based on Rule 22, but the opinions and their reasoning are equally applicable to cases under the Interpleader Act. The history of the "may claim" phrase and the importance of its inclusion in the 1948 Act is also discussed in *A/S Kreditt Bank v. Chase Manhattan Bank*, (DC SD NY 1957) 155 F Supp 30 at 34, aff'd (CA 2 1962) 303 F2d 648.

34. *Burchfield v. Bevans*, (CA 10 1957) 242 F2d 239 at 242-243; *Montgomery Ward & Co. v. Fidelity & Deposit Co.*, (OCA 7 1947) 162 F2d 264 at 268.

law an insurer cannot be sued until tort claims against its insured are reduced to judgment. We suggest that there is none. That claims are unliquidated is an excuse, not a reason, for rejecting jurisdiction.

The "intrusion" on state court jurisdiction which will follow if interpleader jurisdiction is recognized in this case is a feature of nearly all cases under the Act and the rule. The need for federal interpleader jurisdiction was recognized nearly 50 years ago, and its scope has repeatedly been extended, because the jurisdictional limitations of state courts and practice render them inadequate to meet the increased need for interstate interpleader relief.

Unliquidated and contingent (nonpresent) claims have regularly been brought before federal courts through the Interpleader Act and Rule 22, both before and since the 1948 amendments,<sup>35</sup> and the only distinction between those cases and this one which has been suggested is that direct actions lie on some surety bonds,<sup>36</sup> a circumstance which is patently not material

35. *Standard Surety & Casualty Co. v. Baker*, supra (CCA 8 1939) 105 F2d 578 (unliquidated claims against principal on surety bond); *Edner v. Massachusetts Mut. Life Ins. Co.*, (CCA 3 1943) 138 F2d 327 ("claimant" who lacked present claim to benefits of life insurance policy); *Pennsylvania Fire Ins. Co. v. American Airlines, Inc.*, (DC ED NY 1960) 180 F Supp 239 at 241-242; *Onyx Refining Co. v. Evans Production Corp.*, (DC ND Tex 1959) 182 F Supp 253 at 254-255; and see *F. H. McGraw & Co. v. Sherman Plastering Co.*, (DC Conn 1943) 60 F Supp 504 at 512-513, aff'd (CCA 2 1945) 149 F2d 301, cert den (1945) 326 US 753.

36. E.g., *American Indemnity Co. v. Hale*, supra, (DC WD Mo 1947) 71 F Supp 529 at 533-534.



to the problems of these parties or the purposes of the modern law. Indeed, the hazards faced by the insurer and the possibility of an unjust allocation of the policy proceeds among the claimants are, if anything, greater in tort cases, where the relative values of the unliquidated claims are necessarily indefinite and cannot be known or compared until they have been reduced to judgment. That indefiniteness, and the risks it creates, is neither cured nor affected by the circumstance that claimants can sue the insurer in states having direct action statutes.

The decision of the court below does not merely make the issue turn on an irrelevancy; it ignores the terms of the statute and the rule and the implications of their history. The language of the statute ("may claim")<sup>37</sup> and the rule ("may be exposed") sustains jurisdiction irrespective of any uncertainty about the claims which would have prevented relief under former practice, whether that uncertainty is as to their validity, their exact amount or their ultimate assertion against the vexed and threatened plaintiff. None of these contingencies is of primary importance over the others or prevents the injured person from being one

37. This language has been given substance by the cases. It has repeatedly been held under the 1948 Act that "the mere threat of future litigation" is a sufficient basis for statutory interpleader. *A/S Kreditt Bank v. Chase Manhattan Bank*, supra, (DC SD NY 1957) 155 F Supp 30 at 33-34, aff'd (CA 2 1962) 303 F2d 648; see also *John Rosenblum, Inc. v. Gillespie*, (DC SD NY 1960) 187 F Supp 258 at 260.

who "may claim" an interest in the policy or whose claim "may" expose the carrier to multiple liability. The Act and the rule should be applied to all cases fairly within their terms, and their history and purpose are inconsistent with the view that restrictions should be implied or that they should be narrowly construed.<sup>38</sup>

### III.

The decision of the court below destroys the uniform application of a grant of federal jurisdiction by making the availability of federal interpleader vary from state to state, depending upon the availability under local law of a direct action against the insurer.

State law determines whether claimants can sue the insurer directly. *Brillhart v. Excess Ins. Co.*, (1942) 316 US 491 at 496. The court below held that the tort claimants could not be interpleaded to establish their claims against the insurance proceeds, because neither Oregon nor California law permits them to maintain direct actions against the insurer (R 170-172).

It is the result of the decision below that this import-

38. "The interpleader statute is liberally construed to protect the stakeholder from the expense of defending twice, as well as protect him from double liability. \* \* \* *New York Life Insurance Company v. Welch*, (CA DC 1961) 297 F2d 787 at 790

See also: *Sanders v. Fertilizer Works*, supra, (1934) 292 US 190 at 199; *Maryland Casualty Co. v. Glassell-Taylor & Robinson*, supra, (CCA 5 1946) 156 F2d 519 at 524; *Builders and Developers Corp. v. Manassas Iron & Steel Co.*, (DC ED Pa 1962) 208 F Supp 485 at 489; *Publicity Building Realty Corporation v. Hannegan*, (CCA 8 1943) 139 F2d 583 at 587-588; *John Hancock Mut. Life Ins. Co. v. Kegan*, (DC Md 1938) 22 F Supp 326 at 330.

ant grant of federal jurisdiction is not uniformly available, but instead depends upon the state of local law. By so holding, the court below disregarded the controlling principle that the scope and operation of statutes granting federal jurisdiction are not controlled by the vagaries of state law; such statutes are self-contained, so as to be of uniform application and availability. In *Shamrock Oil Corp. v. Sheets*, supra, (1941) 313 US 100 at 104, the Court said:

“\* \* \* The removal statute, which is nationwide in its operation, was intended to be uniform in its application, unaffected by local law definition or characterization of the subject matter to which it is to be applied. Hence the Act of Congress must be construed as setting up its own criteria, irrespective of local law, for determining in what instances suits are to be removed from the state to the federal courts. \* \* \*”<sup>39</sup>

The construction of the Act and the rule which was adopted by the court below erroneously creates a special federal jurisdiction available to the citizens of some—but not all—of the states. It must be rejected.

39. See also *Chicago, R. I. & P. R. Co. v. Stude*, (1954) 346 US 574 at 580; *Horton v. Liberty Mut. Ins. Co.*, (1961) 367 US 348 at 352-353; 1A Moore's Federal Practice (2d Ed 1965) 75-79 (§ 0.157).

**The recognition of interpleader jurisdiction in this case is responsive to a critical need for interpleader relief.**

Interpleader protects the vital interests of all interested persons:

**a. The claimants**

The claimants, in the common case where the tortfeasor cannot respond to judgments in excess of the policy limits, are for practical purposes adverse to each other as well as the tortfeasor.<sup>40</sup> In the absence of effective procedures to marshal the policy proceeds, determine the claims and prorate the fund among those entitled to share in it, there must be either a race to judgment or settlements for disproportionate amounts which unfairly limit or defeat some of the claims. To achieve a fair distribution, the claims should be determined together under the same rules in a single proceeding, and the fund prorated among those who are entitled to share in it. Establishing the claims in interpleader permits them to be valued, not only with respect to the liability of the tortfeasor, but also with respect to

40. "Finally, it has been urged that the action is not proper because the claimants do not have claims adverse to each other. It might, by the same reasoning, be said that 100 persons adrift in the ocean with but one small lifeboat in sight were not adverse to each other. We fear, however, that the concept of non-adversity would dwindle in direct proportion to the number of swimmers reaching the boat. \* \* \* *Commercial Union Insurance Co. of New York v. Adams*, supra, (DC SD Ind 1964) 231 F Supp 860 at 863

See also *Standard Surety & Casualty Co. v. Baker*, supra, (CCA 8 1939) 105 F2d 578 at 582.



each other for the determination of their relative participation in the fund which is the limited source of compensation for all.

#### b. The insured

The insured, if he has other assets or the hope of securing them in the future, is primarily interested in securing settlements of all of the claims, within the policy limits if possible, and the insurer is obliged under the implied obligations of its contract to seek this in good faith.<sup>41</sup> The haphazard trial of separate suits in the courts of different states prevents an orderly procedure to secure an overall settlement which will afford him the greatest measure of protection.

#### c. The insurer

The insurer faces problems of two sorts: Initially, it is obliged to provide a defense for its insured in each of many lawsuits brought by people whose position with respect to the fund created by the policy usually involve an identical issue of liability. It is a primary purpose of interpleader to protect the stakeholder from multiple litigation as well as from multiple liability.<sup>42</sup>

41. 7A Appleman, *Insurance Law and Practice* (1962 Ed) 551 (§ 4711); Anno: 40 ALR 2d 168 (1955); Keeton: *Liability Insurance and Responsibility for Settlement*, 67 Harv L Rev 1136 (1954).

42. *New York Life Insurance Company v. Welch*, (CA DC 1961) 297 F2d 787 at 790; *American Hawaiian Steamship Co. v. Bowring & Co.*, supra, (DC SD NY 1957) 150 F Supp 449 at 455; *Metropolitan Life Ins. Co. v. Segaritis*, (DC ED Pa 1937) 20 F Supp 739 at 741.

Secondly, the difficulty of prorating the fund among claimants in the absence of interpleader makes the insurer's performance of its obligations to the insured difficult and hazardous. For the insurer is obligated to its insured to try in good faith to settle valid claims within the policy limits. Settlements with some which leave the insured exposed to judgments for others can raise a serious question about the insurer's good faith effort to protect him.<sup>43</sup>

The insurer may also come under duties to the claimants requiring proration of the policy proceeds and thereby become involved in conflicting obligations which expose it to a serious risk of excess liability. It is still usually held that the insurer can, within the indefinite and shifting limits of "good faith", make settlements which exhaust the policy proceeds at its discretion, without regard for the interests of other claimants.<sup>44</sup> However, this principle is under increasing attack; it is not of universal application, and the development by judicial or statutory rule of duties running to the claimants has been freely forecast. The result is a situation which makes the settlement of multiple claims hazardous in the absence of interpleader. Whether an

43. That an insurer makes "over-eager" settlements with some of the claimants is evidence of bad faith toward the insured. *Brown v. United States Fidelity & Guaranty Co.*, (CA 2 1963) 314 F2d 675, at 681-682.

44. *Turk v. Goldberg*, (1920) 91 NJ Eq 283, 109 Atl 732; *Alford v. Textile Ins. Co.*, (1958) 248 NC 224, 103 SE 2d 8; *Liguori v. Allstate Insurance Company*, (1962) 76 NJ Super 204, 184 Atl 2d 12; Anno: 70 ALR 2d 416 (1960).

insurer can settle claims without regard to the interests of other known claimants is uncertain in most states; failing to prorate the proceeds may well be found to constitute "bad faith" in cases not now foreseen.<sup>45</sup>

In a given case, whether settlements which exhaust the policy limits will expose the insured to liability to the claimants or its insured; whether, if the insurer fails to settle for fear of such liability, it may be held to have breached its obligations anyway<sup>46</sup>—these are sufficiently serious problems in the absence of any interstate elements. However, when the courts and laws of several states become involved, the insurer's responsibilities will become a hopeless and hazardous tangle if the controversies cannot be consolidated in a single proceeding to determine the claims and prorate the policy proceeds.

The real and practical hazards which face the insurer in these cases are critical for the very reason that

45. The law is unsettled in most states, although prorating in certain cases is required by New York statute (§ 370, Vehicle & Traffic Law). That this justifies interpleader, see Keeton, *Preferential Settlement of Liability—Insurance Claims*, 70 Harv L Rev 27 at 43-44 (1956); see generally, Keeton, *Ancillary Rights of the Insured*, 13 Vanderbilt L Rev 837 at 844-845 (1960); 8 Appleman, *Insurance Law and Practice* (1962 Ed) 331-335 (§ 4892); Comment, 32 Chicago L Rev 337 (1965); *Underwriters at Lloyd's v. Nichols*, supra, (CA 8 1966) 363 F2d 357 at 359-360.

46. See *Kinder v. Western Pioneer Insurance Company*, (1965) 231 Cal App 2d 894, 42 Cal Rptr 394 at 399. Professor Keeton adds:

"It might be suggested that excess liability could always be avoided by the company's acting in good faith and with reasonable care toward all concerned. But a realistic view of the minimum evidence required for proof of bad faith or negligence in excess-liability cases compels the conclusion that certainty is wanting in this escape route. \* \* \*" 70 Harv L Rev 27 at 49 (1956)

ally available only in equity is irrelevant. \* \* \*

\* \* \* [T]he court should decide whether to allow use of this joinder device. \* \* \* But if the issues would be triable to a jury if they were litigated independently, they should be triable to a jury as a matter of right though Rule 22 or the Interpleader Act has been invoked. \* \* \*<sup>55</sup>

Recognition of interpleader jurisdiction over unliquidated tort claims which exceed the policy limits will not deprive the claimants of a jury trial.

#### **b. Choice of forum**

Under the venue provisions of 28 USC § 1397, *infra* 43-44; regulating actions under the Interpleader Act, the plaintiff cannot wholly disregard the convenience of the claimants: The action must be brought in a district in which one or more claimants reside. Furthermore, if an interpleader plaintiff has selected a forum which is inconvenient in the sense that a different forum would be more convenient for the parties, the District Court has authority under 28 USC § 1404(a)<sup>56</sup> to transfer the

55. 2 Barron and Holtzoff, *Federal Practice and Procedure* (Rules Ed 1961) 250; see generally 247-251 (§ 556).

56. 28 USC § 1404(a):

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."



action to any other court where it might have been brought.<sup>57</sup>

The venue question is of even less importance in diversity cases under Rule 22. While venue under 28 USC § 1391<sup>58</sup> can be laid at the residence of the plaintiff (or that of all of the defendants), there is no provision for out-of-state service, and this limitation will substantially eliminate proceedings in inconvenient forums unless a basis for an action *in rem* can be established. See 3 Moore's Federal Practice (2d Ed 1964) 3012-3013 (§ 22.04).

It can be agreed that cases will arise in which there is no single forum which is manifestly close to all of the claimants. However, litigation, like people, is increasingly mobile, and the problem can easily be overstated. The substantial advantages to the claimants of combining their resources to establish liability in a single proceeding and the desirability of permitting interpleader for their protection as well as that of the other interested parties compels the conclusion that this inconvenience is not excessive. It exists in any case

57. *Mutual Life Ins. Co. of N.Y. v. Ginsburg*, (DC WD Pa 1954) 125 F Supp. 920, app dism'd (CA 3 1956) 228 F2d 881, cert den (1956) 351 US 979, reh den (1956) 352 US 813, reh den (1957) 355 US 875; *Travelers Insurance Company v. Stuart*, (DC WD Ark 1964) 226 F Supp 557; *Fidelity and Casualty Company of New York v. Levic*, (DC WD Pa 1963) 222 F Supp 131.

58. 28 USC § 1391(a):

"A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside."

the claims have not been reduced to judgment. In *Standard Surety & Casualty Co. v. Baker*, supra, (CCA 8 1939) 105 F2d 578 at 581-582 the court accurately described the insurer's position as to unliquidated claims:

"It may finally be determined that one or two only are entitled to recover, yet judgments might be procured on many of these claims simultaneously if defendants may proceed to the prosecution of their various suits. There might not be opportunity to plead by way of amendment or supplemental answer, the recovery of a prior judgment against plaintiff on the same bond. Again, courts might not permit such a defense because, perchance, the courts might hold that satisfaction and adjudication of liability alone would satisfy the requirements of the bond. After recovery of judgments, execution might issue on all, and plaintiff might find it impossible to set aside final judgments. Even if it be assumed that the first to recover judgments or to issue execution should first be paid until the liability on the bond was exhausted, subsequent claimants in order of recovery on judgment or issuing of execution might insist that the penalty should be apportioned (*Thomas Laughlin Co. v. American Surety Co.*, supra), and liability on that ground might be asserted. In these circumstances there is a real threat of liability, and it was to meet such a situation that the interpleader statutes were adopted. \* \* \*"

The insurer should not be compelled to separate out conflicting local policies and expose itself to the risk of multiple liability to its insured or the claimants through the conflicting demands of several states. The stake-

holder, as well as the claimants, is entitled to the protection of diversity jurisdiction when the actual adversity over the fund is among claimants whose only common interest lies in breaking the policy limits against an out-of-state insurer.<sup>47</sup>

#### d. The courts

The courts are also interested in sustaining interpleader jurisdiction of this class of case. While the desirability of consolidating related claims is not unique to interpleader, interpleader is unquestionably consistent with judicial needs in cases where there is a limited fund to which many persons look for compensation for claims growing out of a single occurrence. Where the claimants are citizens of several states, other devices have consistently proved inadequate, primarily because jurisdictional limitations require an unrealistic measure of cooperation among all of the contending parties.<sup>48</sup> Consolidating 35 personal injury trials in a single proceeding necessarily creates substantial savings of judicial time and public expense and avoids the serious risk of contradictory answers to the same question as to persons similarly situated. The use of interpleader for the consolidation and trial of claims against a limited

47. See Chafee, *Interpleader in the United States Courts*, 41 Yale L J 1134 at 1136 (1932).

48. Comment; *Procedural Devices for Simplifying Litigation Stemming from a Mass Tort*, 63 Yale L J 493 (1954); see *Pennsylvania R. Co. v. United States*, (DC NJ 1953) 111 F Supp 80.

fund arising out of mass torts promotes important goals of judicial administration, goals which have been freely implemented throughout the Federal Rules (*supra* 18, fn 25).

The ultimate justification for sustaining the interpleader jurisdiction of federal courts in these cases lies in the fact that they involve the competing claims of citizens of several states which in every real sense lie against a fund as to which their rights should be evenly and fairly determined, and that the absence of interpleader exposes the insurer to multiple litigation and the risk of multiple liability.<sup>49</sup> From the standpoint of all of the parties—the claimants, the insured, the insurer and the courts—interpleader is not merely useful; it is indispensable for the protection of their rights and the distribution of the fund in a fair and orderly manner. A failure to grant that protection for lack of a direct action statute disregards the realities of the situation in favor of an irrelevancy.

“\* \* \* It is true that the victims technically have no cause of action against the insurance company until judgment, and only against the assured till then; but substantially they are all seeking the

49. Professor Wechsler, no friend of diversity jurisdiction, has recognized the justification for interstate interpleader:

“To do so is to premise federal intervention on a current finding of state inadequacy. The problem is to limit intervention to the situations where it is in fact responsive to such need.” Wechsler, *Federal Jurisdiction and the Revision of the Judicial Code*, 13 Law and Cont Prob 216 at 239-240 (1948).



insurance money from the start. The company's obligation to defend and its limited duty to pay give it a vital interest in every tort action. It is no interloper in asking a unification of the numerous tort actions brought against the assured. Its request benefits the claimants as well as itself. Instead of a haphazard looting of the fund by the first comers, a bill in the nature of interpleader filed before numerous judgments have ripened assures a fair share of the insurance money to each victim and conforms to the principle, 'Equity is equality.'<sup>50</sup>

## V.

**The recognition of interpleader jurisdiction in this case does not invade any interest of the tort claimants.**

It is sometimes asserted that the recognition of interpleader jurisdiction over unliquidated tort claims will deprive tort claimants of their right to a jury trial of their damage actions against the insured and of their "right" to choose the forum. The first is wholly wrong, and the second largely so; it is strongly overbalanced by the substantial benefits to all parties and the courts which will flow from permitting such actions.

### a. Right to jury trial

In *Liberty Oil Co. v. Condon Bank*, (1922) 260 US 235 at 244 the Court stated that an interpleader action

50. Chafee: *The Federal Interpleader Act of 1936*; II, 45 Yale L. J 1161 at 1166 (1936). Accord: Keeton, *Preferential Settlement of Liability-Insurance Claims*, 70 Harv L Rev 27 at 41-44 (1956).

is equitable in nature, and there is consequently no right to a jury trial at either stage of the proceeding.<sup>51</sup>

*Liberty Oil* has been undermined, however, by the statutory extension of interpleader to controversies which were not within the interpleader jurisdiction of equity courts and by the recognition, since the union of law and equity and adoption of the Federal Rules has permitted the joinder of legal and equitable issues in a single proceeding, that the nature of the issues controls the right to jury trial, not a historical classification of the entire proceeding.<sup>52</sup> Consequently, the clear weight of professional and judicial opinion supports the right to a jury trial of legal issues arising during the

51. The Court's statement was dictum on the facts of the case. However, the suggestion has been followed by some of the lower courts and is both supported and contradicted by Professor Moore.

*Liberty Nat. Life Ins. Co. v. Brown*, (DC MD Ala 1954) 119 F Supp 920 at 921-922

*Edward B. Marks Music Corporation v. Wonnell et al.*, (DC SD NY 1944) 4 FRD 146

*Byrum v. Prudential Life Ins. Co. of America*, (DC ED SC 1947) 7 FRD 585 at 587

*Pennsylvania Fire Ins. Co. v. American Airlines, Inc.*, supra, (DC ED NY 1960) 180 F Supp 239 at 242

cf 5 Moore's Federal Practice (2d Ed 1964) 302-303 (§ 38.38 (1)) with 3 Id 3013 (§ 22.04(3))

Several years before *Liberty Oil* was decided, Judge Hand took a contrary position. *Sherman Nat. Bank v. Schubert Theatrical Co.*, (DC SD NY 1916) 238 Fed 225 at 230-231.

52. The latter analysis has received strong support since *Beacon Theatres v. Westover*, (1959) 359 US 500 at 509-510. See also *Dairy Queen v. Wood*, (1962) 369 US 469 at 472-473.

second stage of interpleader actions.<sup>53</sup> Whether the trial of tort claims in the second stage is regarded as a historical law action which retains its form when included in a modern interpleader action, or whether the tort claim is treated as an essentially legal issue, the result is the same—the claimants will have a jury trial of their claims.

The point is illustrated by *DePinto v. Provident Security Life Insurance Company*, (CA 9 1963) 323 F2d 826, at 834-837, cert den (1964) 376 US 950, reh den (1966) 383 US 973, a stockholders' derivative action which the court recognized was essentially an equitable proceeding. The court held, however, that the underlying legal claims of the corporation against its officers and directors must be tried by a jury, and it refused to allow the historic characterization of the action to limit or control the right to a jury trial.<sup>54</sup>

Barron and Holtzoff conclude:

"Viewed in this perspective, the fact that the procedural device known as interpleader was historic-

53. CASES: *Pan American Fire & Casualty Company v. Revere*, supra, (DC ED La 1960) 188 F Supp 474 at 483; *John Hancock Mut. Life Ins. Co. v. Yarrow*, (DC ED Pa 1951) 96 F Supp 185 at 187-188; *John Hancock Mut. Life Ins. Co. v. Kegan*, supra, (DC Md 1938) 22 F Supp 326 at 331; *Savannah Bank & Trust Company of Savannah v. Block*, (DC SD Ga 1959) 175 F Supp 798 at 801.

OTHER AUTHORITIES: Harrington, *Jury Trial In Interpleader*, 39 Tex L Rev 632 (1961); Note, 54 Mich L Rev 1171 (1956); Note, 17 Okla L Rev 79 (1964); Note, 1956 Wash U L Rev 264; Wright, *Minnesota Rules 135-136* (1954).

54. This solution has been suggested in *Fanchon & Marco, Inc. v. Paramount Pictures*, (CA 2 1953) 202 F2d 731 at 735; see also *Ramsburg v. American Investment Company of Illinois*, (CA 7 1956) 231 F2d 333. The applicability of this analysis to interpleader cases is suggested in *Multiparty Litigation in the Federal Courts*, 71 Harv L Rev 874 at 988 (1958).

under the Act when claims are joined over state lines.

Recognition of interpleader jurisdiction in these cases will only infrequently cause measurable inconvenience to the tort claimants. The practical alternative which faces most of them is an empty triumph in a local court. The reality of the claimants' essentially adverse claims to the proceeds of the policy—as well as the needs of the insurer—justifies recognition of interpleader jurisdiction and any limitations upon traditional choice-of-forum principles which may result.

## VI.

The trial court had jurisdiction to enjoin proceedings against State Farm and its insured in any other court.

The injunction against prosecuting claims against State Farm or its insured in any other court was expressly authorized by 28 USC § 2361 of the Interpleader Act, *infra* 44, and it is clear that in the absence of an injunction many of the most important benefits of interpleader relief are lost.<sup>59</sup> The statutory authority to en-

59. " \* \* \* Except where claimants are willing to await the determination of their rights in an interpleader action, such an action loses a good deal of its effectiveness unless the interpleader court can enjoin them from instituting or continuing proceedings in all courts, state and federal. \* \* \* " 3 Moore's Federal Practice (2d Ed 1964) 3011 (§ 22.04)

" \* \* \* an interpleader suit will not give complete relief to the stakeholder unless the entire controversy can be settled in the interpleader proceeding. \* \* \* without these injunctions, the relief would lose a large part of its value. \* \* \* " Chafee: *Interpleader in the United States Courts*, 41 Yale L J 1134 at 1136 (1932).



join such proceedings is comprehensive; Congress did not contemplate an ineffective interpleader remedy.

The weight of authority also supports the view that an injunction is available in a proceeding under Rule 22, despite the limitations on injunctions against state court proceedings contained in 28 USC § 2283.<sup>60</sup> In *Pan American Fire & Casualty Company v. Revere*, supra, (DC ED La 1960) 188 F Supp 474 at 485, Judge Wright reviewed the authorities and concluded:

"\* \* \* [E]very indication is that, regardless of the Interpleader Act, the power of a federal court to enjoin pending state court proceedings in a case like this one will be sustained. Certainly that result is desirable, if not indispensable. If the court had no power to enjoin concurrent state court proceedings, the grant of interpleader would often create more problems than it solved."<sup>61</sup>

Professor Chafee, writing before the expansion of jury practice under the Federal Rules, suggested that the law actions of tort claimants interpleaded by an insurer should proceed independently of the interpleader action in order to protect their right to a jury trial. The interpleader injunction, under this view, would be

60. 28 USC § 2283:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

61. See also 3 Moore's Federal Practice (2d Ed 1964) 3010-3012 (§ 22.04).

limited to protecting the fund against the judgments.<sup>62</sup> If petitioners correctly contend that jury trial of tort claims is now available in federal interpleader actions, this basis for limiting the power of the courts to enjoin other proceedings no longer exists.

On the other hand, there are basic reasons for not limiting the scope of the injunction. If it is, important benefits of interpleader practice would be wholly lost, and, as Judge Wright noted, " \* \* \* the grant of interpleader would often create more problems than it solved."<sup>63</sup> The insurer would be faced with the same multiple litigation which it sought to avoid. Unforeseen problems in protecting the rights of the parties would result, for a limited injunction would not protect the insured against execution on judgments entered in other courts, and he would be deprived of his contract right to indemnity by the insurer up to the policy limits. Finally, as we have pointed out, *supra* 26-27, the claims should (but would not) be determined in one proceeding so that their relationship with each other as against the fund can be determined in a single proceeding.

A remedy which does not relieve the parties from the burden of multiple litigation, which exposes the

<sup>62</sup> Chafee: *Federal Interpleader Since the Act of 1936*, 49 Yale L. J. 377 at 420-421 (1940). This practice was followed in *Aleck v. Jackson*, (1892) 49 NJ Eq 507, 23 Atl 760 and more recently in *Fireman's Fund Ins. Co. v. Irwin*, (DC ND Ga 1948) 82 F Supp 180 at 182.

<sup>63</sup> *Pan American Fire & Casualty Company v. Revere*, *supra*, (DC ED La 1960) 188 F Supp 474 at 485.

insured to execution before the policy proceeds are exhausted, and which results in local judgments obtained under varying rules and standards would be a small improvement over the situation created by the judgment of the court below. It would operate unevenly and unfairly and would not effectuate the policies of interpleader practice.

"The Federal Interpleader Statute and Rule 22, Federal Rules of Civil Procedure, were not designed merely to prevent a multiplicity of suits and to protect the stakeholder from multiple liability, but they were also intended to require all interested parties to come in and set up their claims in one case, so as to prevent it from being only a race to the swift, where a creditor who had a large claim and the means by which to prosecute it might promptly secure judgment against the stakeholder in another state, and by a prior execution consume the entire amount of the bond, to the exclusion and detriment of creditors having small claims or inadequate means by which to collect them. \* \* \*"<sup>64</sup>

It is not surprising that courts recognizing jurisdiction in this class of case have rejected the suggested limitation.<sup>65</sup>

64. *Maryland Casualty Co. v. Glassell-Taylor & Robinson*, supra, (CCA 5 1946) 156 F2d 519 at 523. In *Tretnies v. Sunshine Min. Co.*, (1939) 308 US 66 at 74 this Court recognized the need for authority to enjoin other proceedings.

65. *Pan American Fire & Casualty Company v. Revere*, supra, (DC ED La 1960) 188 F Supp 474 at 483-485; *Commercial Union Insurance Co. of New York v. Adams*, supra, (DC SD Ind 1964) 231 F. Supp 860 at 867-868.

**CONCLUSION**

The judgment of the Court of Appeals should be reversed; this Court should determine that the District Court had jurisdiction over the subject matter of the action, and the case should be remanded to the Court of Appeals for determination of the question of personal jurisdiction which was the subject of the appeal from the District Court. *Polizzi v. Cowles Magazines*, (1953) 345 US 663 at 667.

Respectfully submitted,

JOHN GORDON GEARIN

*Counsel for Petitioners*

JAMES H. CLARKE

OTTO R. SKOPIL, JR.

*of Counsel*



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## APPENDIX A

**28 USC § 1335 (June 25, 1948, c. 646, 62 Stat. 931):**

(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of \$500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of \$500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of \$500 or more, if

(1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if (2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.

(b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

**28 USC § 1397 (June 25, 1948, c. 646, 62 Stat. 936):**

Any civil action of interpleader or in the nature

of interpleader under section 1335 of this title may be brought in the judicial district in which one or more of the claimants reside.

**28 USC § 2361 (June 25, 1948, c. 646, 62 Stat. 970; May 24, 1949, c. 139, § 117, 63 Stat. 105)**

In any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action until further order of the court. Such process and order shall be returnable at such time as the court or judge thereof directs, and shall be addressed to and served by the United States marshals for the respective districts where the claimants reside or may be found.

Such district court shall hear and determine the case, and may discharge the plaintiff from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment.

**APPENDIX B****Rule 22, Federal Rules of Civil Procedure (as amended Dec. 29, 1948, effective Oct. 20, 1949)**

(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(2) The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by Title 28, U.S.C., §§ 1335, 1397, and 2361. Actions under those provisions shall be conducted in accordance with these rules.



## APPENDIX C

Feb. 22, 1917, c. 113, 39 Stat. 929:

\* \* \* That the district courts of the United States shall have original cognizance to entertain suits in equity begun by bills of interpleader where the same are filed by any insurance company or fraternal beneficiary society, duly verified, and where it is made to appear by such bill that one or more persons, being bona fide claimants against such company or society, reside within the jurisdiction of said court; that such company or society has made or issued some policy of insurance or certificate of membership providing for the payment of a sum of money of at least \$500 as insurance or benefits to a beneficiary or beneficiaries or to the heirs, next of kin, or legal representative of the person insured or member; that two or more adverse claimants, citizens of different States, are claiming or may claim to be entitled to such insurance or benefits and that such company or society deposits the amount of such insurance or benefits with the clerk of said court and abide the judgment of said court. In all such cases the court shall have the power to issue its process for said claimants, returnable at such time as the said court or a judge thereof shall determine, which shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found; to hear said bill of interpleader and decide thereon according to the practice in equity; to discharge said complainant from further liability upon the payment of said insurance or benefit as directed by the court, less complainant's actual court costs; and shall have the power to make such orders and decrees as may be suitable and proper and to issue the necessary writs usual and customary in such cases for the purpose of carrying out such orders and decree: \* \* \*

Feb. 25, 1925, c. 317, 43 Stat. 976:

\* \* \* That an Act approved February 22, 1917, authorizing insurance companies and fraternal societies to file bills of interpleader be amended to read as follows: ♦

"SECTION 1. That the district courts of the United States shall have original jurisdiction to entertain and determine suits in equity begun by bills of interpleader, duly verified, filed by any insurance company or association or fraternal or beneficial society, and averring that one or more persons who are bona fide claimants against such company, association, or society resides or reside within the territorial jurisdiction of said court; that such company, association, or society has issued a policy of insurance or certificate of membership providing for the payment of \$500 or more as insurance, indemnity, or benefits to a beneficiary, beneficiaries, or the heirs, next of kin, legal representatives, or assignee of the person insured or member; that two or more adverse claimants, citizens of different States, are claiming to be entitled to such insurance, indemnity, or benefits; that such company, association, or society has paid the amount thereof into the registry of the court, there to abide the judgment of the court. \* \* \*

May 8, 1926, c. 273, §§ 1-3, 44 Stat. 416.<sup>66</sup>

\* \* \* That the district courts of the United States shall have original jurisdiction to entertain and determine suits in equity begun by bills of interpleader duly verified, filed by any casualty company, surety company, insurance company or association or fraternal or beneficial society, and averring that one or more persons who are bona fide claimants against such company, association, or society resides or reside within the territorial jurisdiction of said court; that such company, association, or society has in its

<sup>66</sup> Sic; see p 868.

custody or possession money or property of the value of \$500 or more, or has issued a bond or a policy of insurance or certificate of membership providing for the payment of \$500 or more to the obligee or obligees in such bond or as insurance, indemnity, or benefits to a beneficiary, beneficiaries, or the heirs, next of kin, legal representatives, or assignee of the person insured or member; that two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property or the penalty of such bond, or to such insurance, indemnity, or benefits; that such company, association, or society has deposited such money or property or has paid the amount of such bond or policy into the registry of the court, there to abide the judgment of the court. \* \* \*

\* \* \* Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any other Federal court on account of such money or property or on such bond or on such policy or certificate of membership until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be suitable and proper, and issue all such customary writs as may be necessary or convenient to carry out and enforce the same. \* \* \*

Jan 20, 1936, c. 13, § 1, 49 Stat. 1096:

(26) ORIGINAL JURISDICTION OF BILLS OF INTERPLEADER, AND OF BILLS IN THE NATURE OF INTERPLEADER—TWENTY-SIXTH.—(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified, filed by any person, firm, corporation, association, or society having in his or its custody or possession money or property of the value of \$500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of the value or amount of \$500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of \$500 or more, if—

(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligation; and

(ii) The complainant (a) has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court; or (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

(b) Such a suit may be brought in the district



court of the district in which one or more of such claimants resides or reside.

(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same.

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# In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 391

STATE FARM FIRE AND CASUALTY  
COMPANY and GREYHOUND LINES, INC.,  
*Petitioners,*

v.

KATHERINE TASHIRE, EVA SMITH, HARRY  
SMITH, LILLIAN G. FISHER, BARBARA  
McGALLIAND, DORIS ROGERS, GAIL R.  
GREGG, RICHARD L. WALTON, heir of  
SUE WALTON, and DONALD WOOD,

*Respondents.*

## MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

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# **In the Supreme Court**

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SMITH, LILLIAN G. FISHER, BARBARA  
McGALLIAND, DORIS ROGERS, GAIL R.  
GREGG, RICHARD L. WALTON, heir of  
SUE WALTON, and DONALD WOOD,**  
*Respondents.*

## **MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE**

Come now the following attorneys at law who represent defendants-claimants in the case of *General Fire and Casualty Company v. Greyhound Lines, Inc., et al*, in the United States District Court for the District of Oregon, Civil No. 66-205:

**ANDERSON & GEARY, Oakland, California;  
BERKLEY, RANDALL & HARVEY, Berkeley, California;  
McDANNELL BROWN, Portland, Oregon;  
DEVIN, HUTCHINSON & PETERSON, Seattle,  
Washington; GORDON & RIPPLE, Spokane, Wash-**

ington; HOBURG, FINGER, BROWN & ABRAMSON, San Francisco, California; KING, MILLER, ANDERSON, NASH & YERKE, Portland, Oregon; GEORGE LUOMA, Roseburg, Oregon; MIROYAN, MOORE, KRICHEBERG & PITAGORA, San Jose, California; MORGAN, BEAUZAY, WYLIE, FERRARI & LEAKY, San Jose, California; AGNESS PETERSON and GEORGE VAN NATTA, St. Helens, Oregon; QUACKENBUSH, DEAN, BESCHEL & SMITH, Spokane, Washington; REITER, DAY & WALL, Portland, Oregon; ROETHLER & DUNN, Kelso, Washington; SABIN, DAFOE & NEWCOMB, Portland, Oregon; WILLIAM F. SCHULTE, Portland, Oregon; PETER C. STERNBERGER, San Francisco, California; TOOZE, POWERS, KERR, TOOZE & PETERSON, Portland, Oregon; TRUEHAFT & WALKER, Oakland, California.

and, pursuant to the provisions of Rule 42(3) of the rules of this Court, move the Court for leave to file the accompanying brief Amicus Curiae in the above entitled cause.

In support of their motion applicants show the Court as follows:

**I. Nature of Applicants' Interest.**

Applicants are attorneys for the defendants-claimants in an action filed in the United States District Court for the District of Oregon under the provisions of the Federal Interpleader Act (28 U.S.C., Sections 1335 and 2361) entitled "General Fire and Casualty Company, a corporation, Plaintiff, v. Grey-

hound Lines, Inc., a corporation, et al, Defendants, Civil No. 66-205."

Said action arose out of a one-vehicle accident which occurred on December 23, 1965, near Medford, in southern Oregon, involving a Greyhound bus owned by Greyhound Lines, Inc. ("Greyhound"), operated by Greyhound's employee, Joseph W. Bailey ("Bailey") and traveling interstate from Washington to California. As a result of this accident, fourteen persons lost their lives and 25 or more other passengers were injured, several of them seriously. The passengers involved were residents of Washington, Oregon and California, and many of them were traveling from Washington to California.

After the accident, some of the injured persons filed actions against Greyhound, as did representatives of certain of the deceased persons. These actions were filed by the various plaintiffs in the states of Washington, Oregon and California, and in this connection, it is to be noted that of these three states only one, Oregon, has a statutory limit (\$25,000) on the amount which may be recovered in a wrongful death action (see Ore. Rev. Stat., Section 30.020).

On April 12, 1966, General Fire and Casualty Company ("General"), a liability insurer of Greyhound to the amount of \$500,000, filed its action in interpleader, naming as defendants Greyhound, Bailey, all the living bus passengers and the legal representatives of the deceased bus passengers.



Upon motion by General, a temporary restraining order issued on April 12, 1966, preventing all persons involved in the accident or their legal representatives (1) from proceeding in any actions already filed against Greyhound and Bailey or (2) from filing any action against Greyhound and Bailey. Such restraining order is still in effect.

Applicants are interested in the decision to be rendered in the case at bar because it will necessarily have an important impact on their pending case and also on their practice of law in personal injury cases. They seek to bring to the attention of the Court additional circumstances and consequences of any decision in this case which should receive consideration by the Court in reaching its decision and writing its opinion.

The more specific purposes or requests of Applicants are set forth below and in the brief. Certain facts involved in their case and similar cases will be cited throughout the brief in order to provide this Court with a clearer view of the significance of its decision.

## **II. Reasons for Granting Application.**

Applicants seek authority from this Court to file an Amicus Curiae brief because of their concern that the peculiarly narrow issues presented in the case at bar might result in a decision which would not furnish appropriate guidance to the lower courts

faced with many questions raised by this kind of case. On the one hand the decision could leave all the broader more fundamental issues completely unresolved. At the other extreme, the case might result in an opinion interpreted as having ruled upon some of the broader issues when the facts of this case do not provide an appropriate vehicle for ruling on all of them.

This case could well be resolved on the narrow issue, to be raised in this Court for the first time in Respondents' Brief, of the lack of personal jurisdiction over some of the adverse claimants who are Canadian citizens.

On the other hand, the broad issue as tendered by Petitioners and the opinion of the Court of Appeals concerns jurisdiction over the subject matter — a question neither briefed nor argued in that court.

Respectfully submitted,

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and DONALD WOOD,

*Respondents.*

## RESPONDENTS' BRIEF

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*Of Counsel*



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*Respondents.*

RESPONDENTS' BRIEF

**INTRODUCTION**

Respondents do not take exception to Petitioners' references to OPINION BELOW and JURISDICTION. Respondents contend that Rule 22 is not involved in this cause.

**QUESTIONS PRESENTED**

Respondents contend that the question presented for determination by this Court should more properly be expressed as follows:

Whether the District Court has jurisdiction under 28 USC §§ 1335, 1397 and 2361 (The Federal Interpleader Act) over a casualty insurer's action to determine its insured's liability for unliquidated tort claims involving a multiple-claim catastrophe causing injuries to citizens of different states and a foreign country when the insured was one of two or more joint tort feors.

## **RESPONDENTS' STATEMENT OF CASE**

### **1. The Nature of the Action**

Respondents accept this portion of petitioners' statement with the following additions:

The defendant injured passengers on the Greyhound bus filed action against State Farm's insured and Greyhound and its driver (R. 4, 104), claiming they were joint tort feors. The policy limits of \$20,000 relate only to bodily injury (R. 8), and the interpleader action does not involve claims for property damage.

### **2. The Interpleader Allegations of the Complaint**

In addition to those matters set forth on page 4 of petitioners' brief, the complaint contained the following allegations:

(a) Those injured and those making claims were citizens of several states and two of the provinces of Canada (R. 2).

(b) State Farm denied any duty to defend the defendant Clark, its assured.

### **3. Proceedings in District Court**

In addition to the matters referred to in petitioners' brief (pp. 5, 6), on May 14, 1965, petitioner Greyhound filed an answer to State Farm's complaint and cross-claims for declaratory relief (R. 101, et seq). Thereafter, the Court entered an order modifying the restraining order to permit defendants to file actions against various defendants, but at the same time continued the injunction preventing the defendants from prosecuting such actions against State Farm's assured; Greyhound Lines or its driver (R. 170).

### **4. Proceedings in the Court of Appeals**

Petitioners indicate that the only subject of appeal was the question of personal jurisdiction. These respondents presented the question to the Ninth Circuit Court as follows:

"The question is not whether the delivery of the complaint and restraining order by registered mail to the Canadian residents is sufficient service of process. It is appellants' position that the United States District Court does not have jurisdictional power, regardless of the method of service, to render an effective restraining order as against residents of Canada. It is appellants' position that the Canadian residents are necessary parties, and the inability to bring them before the Court renders the entire proceeding invalid."



## SUMMARY OF ARGUMENT

1. The questions before the Court are not only those raised by petitioner but also include the questions presented to the Circuit Court of Appeals for the Ninth Circuit; in a proceeding brought under 28 U.S.C. 1335 does service under § 2361 control or may Rule 4(i)D of the Federal Rules of Civil Procedure be invoked.

An additional problem, not apparent from petitioner's brief, but nevertheless present, is that the petitioners are the insurance carrier for only one of two or more tort feaseor. Respondents raise these matters in support of the decree of the Court below, even though not presented as issues in the petition for writ of certiorari, as they may do under the authority of the decision of this Court in *Langness v. Green*, 282 U.S. 581.

A. Rule 22 of the Federal Rules of Civil Procedure is not applicable to this case, although considered by the Court below along with the statutory interpleader under 28 U.S.C. 1335. Rule 22 applies only when all claimants can be served within the District where suit is brought. The rule was applicable in *Underwriters at Lloyds v. Nichols*, 363 F.2d 364, where all claimants resided in Arkansas. However, respondents agree that case precedence under Rule 22 and under 1335 should be construed together because of the similarity of construction of the rule and the statute.

B. Respondents are not claimants under 28 U.S.C. 1335 since the Oregon and California law does not permit a direct action against the insurer in a case arising out of a motor vehicle accident before judgment. The contrary is true. Such action is forbidden until 30 days after judgment providing the judgment is unsatisfied.

While the Eighth Circuit was of the opinion that the use of interpleader should not depend upon the existence of a direct action statute, the Ninth Circuit felt that the existence of such a statute as in Louisiana underscored the conclusions and its opinion.

2. Where there is a direct conflict between the two statutes pertaining to the same subject matter, one general in nature and one specific, the specific statute prevails. If a general statute is amended, but there appears no intent to amend the specific statute, the specific statute controls.

A. Service here was attempted under Rule 4(i)D of the Federal Rules of Civil Procedure upon alleged claimants who were citizens of Canada and resided therein. Rule 4(i)D provides for service by registered mail. 28 U.S.C. 2361 provides that in actions brought under 28 U.S.C. 1335, service is to be made by the U. S. Marshal for the District in which the claimants may be found. Section 2361 is a specific statute concerning the method of service in a § 1335 proceeding and controls. Therefore, the Canadian residents were never personally served and the Court acquired no

in personum jurisdiction over them. They are indispensable parties to the proceedings and without them, no final disposition of the matter can be made and therefore no jurisdiction of this bill in the nature of interpleader was acquired.

3. Petitioners plead that uniformity among the states should be the controlling principle in determining jurisdiction. This is misleading, even in removal matters, it has been held that if the state lacks jurisdiction the federal court has none, and under Rule 4(e) of the Federal Rules of Civil Procedure, the jurisdiction of the Federal Court would depend upon the laws of the various states.

4. If interpleader is granted, the restraining order should be limited so as to prevent execution on the insurance policy until all claimants able to do so have reduced their claims to judgment. Interpleader is equitable in nature and the Court is required to balance the equities between the various parties. A limited restraining order would be a more effective tool to accomplish this, and the claimants would have the right to a jury trial and selection of form preserved.

A. A distinction should be made between true interpleader and cases involving liability insurance carriers. In true interpleader the stake holder with a life insurance company or financial institution, etc., has only the obligation to deliver a fund to the proper claimant. In liability insurance claims, the "stake holder" must pay the claim to the extent of coverage and also must contest and defend the liability claim.

B. Where two or more tortfeasors are involved, all proceedings against all tortfeasors are restrained and the injured parties are prevented from proceeding against the assets of the assured. If the Court relieves the insurance carriers of their duty to defend after depositing the amount of their policies with the Court, but holds that the injured parties could present their claims in that Court only against the assets of the tortfeasors, the insurance carriers are thereby protected from having to defend against the claims but this does not avoid multiplicity of actions and deprives the assureds of their contractual right to have their insurance carrier defend the actions, and also reduces the assets available to the claimants upon which to execute.

C. Petitioners contradict themselves when on the one hand they state that multiple litigation must at all costs be avoided and on the other represent that a jury trial would be saved to the alleged claimants. If the latter are entitled to individual jury trials, no great savings results. If one mass jury trial is allowed regarding liability and damages, claimants would be effectually denied their right to trial by jury.

D. The solution arrived at in *Travelers Indemnity Co. v. Greyhound*, 260 F. Supp. 530, Adv. Sh. (1966), if interpleader is appropriate, would thus protect and preserve the rights of the various parties hereto.



**ARGUMENT****I****Introduction**

The action originally brought by State Farm primarily sought determination of its duties and obligations under its liability policy. State Farm stated that it had no authority to admit liability on behalf of its assured and contended there was no coverage under the policy. It also stated that if coverage be found, it relinquished all claim to the sum deposited with the Clerk of the Court and asked that it be relieved of its obligation to defend lawsuits pending or later filed against its insured.

Respondents take the position that this proceeding cannot be maintained under Rule 22, but, if at all, only under the Federal Interpleader Act (28 U.S.C., §§ 1335, 1397, and 2361).

Respondents maintain that these matters raised by them before the Ninth Circuit Court are fairly comprised within the question presented to this Court by the petition for a writ of certiorari (Rule 40, 1(d) (1); Rule 23, 1. (c)). Respondents also contend that they may include these matters in support of the decision of the Ninth Circuit Court.<sup>1</sup>

The Circuit Court of Appeals for the Ninth Circuit in rendering its decision did not pass upon the questions raised by these respondents, petitioners

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<sup>1</sup> *Langness v. Green*, 282 U.S. 531, 536, 538.

therein, pertaining to the effectiveness of service under Rule 4(i), paragraph D, upon citizens of Canada by registered mail, and whether such service was sufficient to give the United States District Court for the District of Oregon in personum jurisdiction over said Canadian citizens. In order to decide that question, it is necessary to determine whether the Amendments to Rule 4 of the Federal Rules of Civil Procedure, effective July 1, 1963, and particularly, 4(i), a general service provision, are applicable to causes under the interpleader statute when 28 U.S.C. 2361 specifically provides for method of service in statutory interpleader or bills in the nature of interpleader. Implicit in these questions is the further issue as to whether this action in the nature of a bill of interpleader is a proceeding in rem or in personum.

Respondents agree with Petitioners that the questions raised before this Court are of substantial importance to all concerned. The problems presented by this cause are not only those of preserving respondents' right to choose a forum in which to bring damage actions with jury trial but that of balancing these interests against the interests of the insurance carrier when claims exceed the dollar limitation of the insurance policy.

Petitioners fail to point up by their brief the further problem involved here; the fact that the petitioning insurance carrier represents only one of the two or more joint tort feorsors.

Professor Chafee, in his articles on interpleader,

refers to that part of the proceeding where we now find ourselves as the "first stage" (49 Yale Law Journal, 414). Included within the problems presented at this stage is the form of the restraining order, if any, which the Court should issue if jurisdiction is found. The Court must of necessity consider duties and responsibilities of the insurance carrier besides the obligation of paying damage settlements or judgments up to the amount of the policy limits. Here, the duties to investigate and defend can be of primary importance to the insured.

Petitioners, in their brief, include substantial material regarding the history of interpleader and the opinions of various courts regarding its interpretation. Might we refer to these articles written by Professor Chafee, the citations of which are included in footnote 2.<sup>2</sup>

## II

### Rule 22, FRCP, is Not Applicable

State Farm's complaint alleged jurisdiction under Title 28, § 1335, U.S.C. (R. 1). It would appear from the opinion of the Ninth Circuit Court that it considered its jurisdiction under both the Federal Interpleader Act and Rule 22(1) of the Federal Rules of Civil Procedure (R. 171, 172). The petition for cer-

<sup>2</sup> Chafee: *Modernizing Interpleader* (1921) 30 Yale L. J. 814; *Interstate Interpleader* (1924) 33 Yale L. J. 685; *Interpleader in the United States Courts* (1932) 41 Yale L. J. 1134, 42 *id* 41; *The Federal Interpleader Act of 1936* (1936) 45 Yale L. J. 963, 1161; *Federal Interpleader Since the Act of 1936* (1940) 49 Yale L. J. 377.

tiorari, at page 2, and in petitioner's brief, at page 2, present the question as to whether Rule 22(1), F.R.C.P., grants jurisdiction.

Rule 22 is not applicable in this cause inasmuch as "the claimants must all be personally served within the District" (quoting from Federal Interpleader, 56 Harvard Law Review, 933).<sup>3</sup>

Certiorari was granted in this cause because the opinion in this case by the Ninth Circuit seemingly conflicts with the decision of the Fifth Circuit in *Underwriters at Lloyds v. Nichols*, (1966, CA 8th) 363 F.2d 357. In the *Nichols* case, all claimant-defendants were residents of the State of Arkansas and the cause arose only under Rule 22 (363 F.2d Adv. Sh. 361). Petitioners concede that it would be erroneous for either party to contend that Rule 22 or the Federal Interpleader Act require substantially different interpretations. Respondents cannot but agree with the following language appearing in the *Nichols* case at page 361.

"\* \* \* Herein all actual and potential claimants are from Arkansas, defeating jurisdiction of the instant controversy under the 1948 Act. However, Rule 22 raises no jurisdictional problems in this regard. Since the interpleader acts and Rule 22 are so similar in construction, case precedents arising under the various acts are certainly relevant to the instant dispute and will be discussed herein."

<sup>3</sup> See also *Cordner v. Metropolitan Life Ins. Co. et al*, 234 F. Supp. 765, at 767, citing 3 Moore's Federal Practice (2d Ed. 1964) Sec. 22.04(2) pp. 3009-10.



## III

**Respondents are not "Claimants" within  
the Meaning of 28 U.S.C. § 1335**

We do not here feel that we can improve upon the logic and reasoning contained in the decision of the Court of Appeals for the Ninth Circuit in this cause. It is difficult for those familiar with the trial of automobile cases in Oregon to consider clients as "claimants" as against the liability insurance carriers—a concept completely foreign to Oregon statutes and case decisions. Not only is Oregon Revised Statutes 23.230 related to this problem, but ORS 736.320 prohibits the bringing of an action on a judgment until after the judgment has been unsatisfied for a period of 30 days, and also the mention of insurance, even inadvertently, results in a mistrial in a proceeding against an insured.<sup>4</sup>

The Court, in the *Nichols* case, *supra*, 363 F.2d at page 364, indicated that the use of interpleader should not depend upon the existence or absence of a direct action statute. The Ninth Circuit Court in the instant case felt that the existence of a direct action statute in Louisiana underscored the correctness of its decision (R. 171).<sup>5</sup>

<sup>4</sup> *Leishman v. Taylor*, 199 Or. 546, 263 P.2d 605.

<sup>5</sup> See Comments 42 *Notre Dame Lawyer* 433 (Pub. date Feb. 1967).

## T IV

The Court must have jurisdiction of all possible claimants and 28 U.S.C. 2361 provides the only available means of obtaining such jurisdiction.

Interpleader requires that all possible adverse claimants must be brought within the jurisdiction of the Court. In order to effect such jurisdiction, all such claimants must be personally served, since the Court is without jurisdiction as to those not served and cannot render any judgment with respect to any funds deposited with the Court which would be binding on those not properly served. Interpleader and an action in the nature of interpleader seeks to bring about a final and conclusive adjudication of personal rights and therefore requires that all possible claimants to the alleged fund be brought before the Court in order for a judgment to be binding upon them. Therefore, each and every claimant is an indispensable party.<sup>6</sup> In the instant case the action in the nature of interpleader seeks to determine what may be termed as the intangible rights of the defendants. They must first establish their right to any portion of the alleged fund by proving that petitioner's assured was negligent and such negligence was the proximate cause of the injuries and damages to said defendants. They must also prove that the insurance policy of

<sup>6</sup> *New York Life Insurance Co. v. Dunlevy*, 241 U.S. 518, 521, 36 S.C. 613, 60 L. Ed. 1140; *Clement and Martin v. Dick Corp.*, 97 F. Supp. 961; *Republic of China v. American Express*, 108 F. Supp. 169, 170; *Metropolitan Life Insurance Co. v. Dumson*, 194 F. Supp. 9.

petitioner's provided coverage to the assured in this accident and only then can the defendants establish any right to the proceeds of petitioner's insurance policy. In *Estin v. Estin*, 334 U.S. 541, 548, this Court held that a judgment for support created a property interest which was an intangible. Jurisdiction of this property right could only arise from jurisdiction over the persons whose relationships were the source of the judgment.

In the instant case respondents have only a cause of action and nothing more. Can any right be more intangible? And it is the exercise of this right which petitioner seeks to restrain. It is submitted that this is an action in personum and the personal rights of the defendants cannot be determined unless they have been properly served. *id.* *New York Life Insurance Co. v. Dunlevy*, *supra*.

None of the Canadian defendants had any contacts with the state of Oregon in any transaction involving this proceeding. None of them committed any act, tort or transaction within the state of Oregon. The accident occurred in the state of California. It is therefore apparent that no statute of the state of Oregon could be looked to in order to provide a means of service upon the nationals of a foreign country in that country. The method of service then must be controlled by federal statute or rule alone. Petitioners in the Court below contended that 4(i), Federal Rules of Civil Procedure, and Section 1655 of those rules, control. It was and is respondents' contention that 28 U.S.C. 2361 controls in a proceeding under 28 U.S.C. 1335.

The latter statute is a specific statute pertaining to service of process in statutory interpleader or in bills in the nature of interpleader and contains words of limitation restricting service by "the U. S. Marshals for the respective Districts where the claimants reside or may be found".

Section 1655 of the Federal Rules of Civil Procedure pertains to liens, encumbrances and clouds upon real or personal property and appears to apply to in rem proceedings only, and is therefore not controlling. Secondly, by its terms, it is a statute general in nature and, as between the two, the specific statute, Section 2361 would control.

This Court has ruled that the specific provisions of a statute control exclusively over broader and more general provisions of another statute which may relate to the same subject matter in the absence of a clear manifestation to the contrary by the legislature.<sup>7</sup> Rule 4 of the Federal Rules of Civil Procedure is a general statute pertaining to service of process. 4(i) is one of the amendments to that rule, effective July 1, 1963. Nowhere in the rule, as amended, does there appear any intent to amend or revise Section 2361.

Congress is presumed to know the contents of its statutes, and if it intends the general statute to overrule the specific statute, it would so state.<sup>8</sup>

<sup>7</sup> *Bulova Watch Co. v. United States*, 365 U.S. 753, *Fourco Glass Company v. Transmirra Products Corp.*, 353 U.S. 222, *McEvoy v. United States*, 322 U.S. 102, *D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204.

<sup>8</sup> *Anderson v. Gladdon*, 188 F. Supp. 666, 293 F.2d 463, cert. denied.



It will not be inferred that Congress, in revising the laws, intended to change their effect unless such intention is clearly expressed.

Petitioners, in the Court below, indicated that service in a foreign country, pursuant to Rule 4(i) has been challenged and upheld. State Farm relied upon *Hoffman Motors Corp. v. Alfa Romeo*, 244 F. Supp. 70, (1965), and *Securities & Exchange Commission v. Briggs*, 234 F. Supp. 618, (1964).

In the *Hoffman Motors* case, at page 77, at the beginning of headnotes 9 and 10, it is stated:

"(9, 10) The Automobile Dealers Act (15 U.S.C. Sections 1221-1225) contains no special provision for service of process."

Accordingly, the Court permitted service upon an Italian corporation pursuant to the New York statute providing for service upon a "non-domiciliary" who "transacts any business within the state." The other act involved was the Robinson Patman Act, which contained a special provision concerning service of process (15 U.S.C. Section 22), providing that process may be served "in the District of which (defendant corporation) is an inhabitant, or *wherever it may be found*" (emphasis added).

In the first situation, Rule 4(i) was brought into play because the statute was silent as to service. In the second situation, the statute provided for the method of service and was followed.

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\* *Fourco Glass Co. v. Transmirra Products Corp.*, *supra*.

In *Securities & Exchange Commission v. Briggs*, supra, service was made upon an American citizen in Canada, the question being whether the Court had power to take in personum jurisdiction over one of its citizens, not physically present within the United States when served with process. The acts complained of were committed in New York and the defendant was physically present at the time of the commission of the act. The service was made under 15 U.S.C. Section 77, v. (a), which states in part:

“\* \* \* Process in such cases may be served in any other District of which the defendant is an inhabitant or *wherever the defendant may be found.*” (77 v (a)) (emphasis added).

Subsection (e) of Rule 4, F.R.C.P., states as follows:

“Whenever a statute of the United States or an order of Court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of, or found within the state in which the District Court is held, service may be made under the circumstances and in the manner prescribed by the statute or court, or if there is no provision therein prescribing the manner of service, in the manner stated in this rule, \* \* \*.”

In the notes of the Advisory Committee on Rules, page 72, 1966 Cumulative Pocket Parts, 28 U.S.C.A., Rules 1-11, it is stated concerning Rule 4(e):

“The amendment of the first sentence inserting the word ‘thereunder’ supports the original intention that the ‘order of court’ must be au-

thorized by a specific United States statute. Sec. 1 Barron & Holtzoff, *supra*, at 731. The clause added at the end of the first sentence expressly adopts the view taken by commentators that, if no manner of service is prescribed in the statute or order, the service may be made in a manner stated in Rule 4. See 2 Moore, *supra*, ¶ 4.32, at 1004; Smit, *International Aspects of Federal Civil Procedure*, 61 Colum. L. Rev. 1031, 1036-39 (1961). But see Commentary, 5 Fed. Rules Serv. 791 (1942).

Examples of the statutes to which the first sentence relates are 28 U.S.C. § 2361 (Interpleader; process and procedure); 28 U.S.C. § 1655 (Lien enforcement; absent defendants)."

28 U.S.C. 2361 provides for a method of service, as set forth in Rule 4(e), and is therefore controlling.

Based upon the foregoing it is submitted that the District Court of Oregon never obtained jurisdiction of the Canadian citizens alleged to be claimants to the fund. Not being properly before the Court, there was a failure to bring in indispensable parties and therefore the Court has no jurisdiction of this action in the nature of interpleader. The Decree of the Ninth Circuit Court of Appeals dismissing these proceedings should be affirmed.



## V

The decision of the Court below should be affirmed despite state-by-state variations of the grant of federal jurisdiction in interpleader proceedings.

The petitioners plead uniformity among the states as a controlling principle in determining the jurisdiction of the Court. This plea for uniformity as expressed by petitioners is somewhat misleading. Moore's Federal Practice 1A, page 77, § 0.157, refers to the strict construction of the removal statute. Reference is made to *Lambert Run Coal Co. v. Baltimore & Ohio R.R. Co.*, 258 U.S. 277, wherein it is indicated that if the state court lacks jurisdiction of the subject matter or of the parties, the federal court acquires none. It would then appear that even in removal matters, which petitioners claim demand uniformity, the jurisdiction of the federal court is based upon state law. For example, a state having a "long-arm statute" or a "nonresident motorist statute" would obtain jurisdiction of parties not amenable to process in states lacking such statutes. The argument for uniformity to establish uniformity must fall.

As a further example of variations of federal court jurisdiction, see Rule 4 (e), Federal Rules of Civil Procedure as amended effective July 1, 1963. The Advisory Committee on the Rules indicates that the amendment was made to allow parties to resort to procedures provided by state law for effecting service on non-resident parties in original federal court actions. Again, the jurisdiction of the federal court



would depend upon the existence or nonexistence of various state laws and would vary from state to state.

## VI

If interpleader is granted, the restraining order should be limited so as to prevent execution on the insurance policy.

### INTRODUCTION

The problems facing all parties in catastrophies resulting in innumerable injuries or deaths are not new.<sup>10</sup>

This Court is faced with the problem of whether interpleader should be granted. Professor Chafee refers to this as "the first stage." An integral part of this stage of the proceeding is the form of the restraining order granted by the Court. The granting of interpleader without including any restrictions upon defendants would be a useless act. As a practical matter, the primary effect upon the injured grows out of the form of the restraining order, not the allowance of interpleader. There can be no argument but that the interpleader proceeding, both historically and by present-day application, is equitable in nature. This would not only authorize, but would require, the Court to balance the equities between the various interests represented. Petitioners, by their brief, would have the Court balance the benefits and detriments to the respective parties at the time the Court decides whether or not to grant interpleader.

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<sup>10</sup> See *Procedural Devices for Simplifying Litigation Stemming from a Mass Tort*, 63 Yale L. J. 493.

It is submitted that a limited restraining order after the granting of interpleader would give to the Court a more effective tool with which to balance these equities.

Of primary concern to the injured is the right to a jury trial and to make their own selection as to whether actions might be filed in state or federal court and to make their own determination of venue.

Rule 22, F.R.C.P., provides for the granting of interpleader when the plaintiff "is or may be exposed to double or multiple liability": 28 U.S.C. § 1335, provides for interpleader when two or more people are claiming the same money or property or the same benefits under an insurance policy. Through the years the courts and authors have, by interpretation, talked about "double or multiple vexation," "undue harrassment," and "danger of multiplicity of suits."<sup>11</sup> Petitioners, in their brief, at page 27, make the following statement:

"It is the primary purpose of interpleader to protect the stakeholder from multiple litigation as well as from multiple liability."

In analyzing the purpose and application of interpleader arising out of multiple claims from a single tort, certain matters must be considered:

1. The majority of the decisions relate to claims made against life insurance companies or bonding

<sup>11</sup> *Nichols*, 363 F.2d at 364, quoting *Pan American Fire & Casualty Co. v. Revere*, (E.D. La., 1960) 188 F. Supp. 474; Prof. Chafee, *The Federal Interpleader Act of 1936: II*, 45 Yale L. J. 1166.

companies or financial institutions, each of which has the common denominator of holding a single fund or property and having only the obligation of handing it to the rightful owner.<sup>12</sup>

2. In cases involving liability insurance carriers, the "stakeholder" has two obligations:

- (a) Payment of damage claims to the extent of the policy limits;
- (b) The duty to defend liability claims.<sup>13</sup>

3. In cases involving two or more joint tortfeasors, a restraining order such as entered in this cause (R. 112) effectively prevents the injured parties from proceeding against the joint tortfeasors. This would be true even if the Court had not aided the defendants in a subsequent restraining order (R. 170).

4. A restraining order in this form prevents the injured parties from proceeding against the assets of the insured.

Only three cases involving interpleader and joint tortfeasors have come to our attention. These are:

- (1) *Pan American Fire & Casualty Co. v. Revere* (D.C. E.D. La., 1960) 188 F. Supp. 474;
- (2) *Commercial Union Ins. Co. of New York v. Adams* (D.C. S.D. Ind. 1964) 231 F. Supp. 860;

<sup>12</sup> As examples, see: *Standard Surety & Casualty Co. v. Baker* (C.A. 8, 1939) 105 F.2d 578; *Tretnies v. Sunshine Milling Co.*, *Mining*, 308 U.S. 66 (U.S. 1939) and numerous cases cited; Chaffee, 45 Yale L.J. 963, footnote 7 at 965.

<sup>13</sup> As examples, see: *American Casualty Co. of Reading, Pa., v. Howard*, 187 F.2d 322 at 326 and see R. 8, ¶ 1.



(3) *Travelers Indemnity Co. v. Greyhound Lines, Inc., et al.*, (D.C. W.D. La., Lake Charles Div. 1966) 260 F. Supp. 530 (Adv. Sh.).

The *Revere* case, commencing at page 483; discusses the entry of the restraining order; also, at page 486, expresses the order in the following language:

"Injunctions will issue, restraining all parties from further prosecuting any pending suits against plaintiff or its assured on account of the accident described, or from instituting like proceedings before this or any other Court."

In this case, a school bus and a large tractor-trailer collided head-on resulting in the death of three children and injuries to 23 others. Two automobiles following the bus became involved in the accident. An examination of the decision and the action of the court would indicate that no consideration was given to the fact that there was possible liability on the part of others besides plaintiff's assured. On this point, this case is of little help.

In the *Adams* case, an explosion occurred in a building at the Indiana State Fairgrounds in Indianapolis and 73 people were killed and 300 or more were injured. Three insurance carriers were involved as plaintiffs and approximately 13 corporate entities and six individuals were their assureds. The Court's comments regarding the injunction commence at page 867. The form of the injunction is set out on page 868 of the report, as follows:



"\* \* \* the court will enter an order restraining all claimants from instituting or prosecuting any proceeding in any state or United States court affecting the property involved in this interpleader action, and specifically against instituting or prosecuting any such proceeding against any of the defendants herein designated as the assured, until the further order of the court, all pursuant to Title 28 U.S.C. § 2361 and § 2283."

The court then recognized the possibility that the assureds could be held to respond to judgments in amounts exceeding the "fund" created by the insurance policies. The court then made the following statement:

"This court has no power to prevent any claimant from continuing to assert a claim against any or all of the assured, in an effort to secure a judgment which would enable him to reach the personal funds of the assured. Such is not intended by the restraining order to be issued. However, no such claim may be asserted or prosecuted other than in this action, so long as such order remains in effect."

At page 867, the court indicates that there are two primary reasons for the granting of interpleader (1) to avoid multiplicity of actions and (2) to avoid an inequitable division of a common fund when the fund is insufficient to pay all of the claims against it. The action of the court was to relieve the insurance carriers from all further responsibility upon payment of the policy limits into the court registry. The court's action also preserved to the injured parties the right

to attempt to secure judgment against the individual assureds in excess of this amount. No discussion is included regarding the reservation of jury trials for the injured parties; no discussion is included regarding the duty of insurance carriers to defend the actions for damages in excess of the policy limits.

By its decision, the court effectively protected the rights of the insurance carriers; it did not in any way avoid multiplicity of actions, but specifically reserved these actions against the individuals, but limited their maintenance to the court in question. The court placed upon the assureds the burden and expense of defending damage actions for amounts exceeding the policy limits, despite the contractual obligation of the insurance carriers.

This would reduce the insured's personal assets and thereby reduce the funds available to those injured.

It can be argued that the balancing of the equities among all of the parties involved in this cause and represented by the "injunction" and the order regarding "future proceedings" left much to be desired.

Professor Chafee, in this article in 49 Yale Law Journal 377 at page 420, discusses *Klaber v. Maryland Casualty Co.*, 69 F.2d 934 (C.A. 8, 1934) and *Standard Surety Co. v. Baker*, 105 F.2d 578 (C.A. 8, 1939).

At page 418, the article indicates that the plaintiff was, in effect, a stakeholder, having issued a sur-

ety bond in the amount of \$5,000 against which claims totaling over \$20,000 had been made. The proceeding was a bill in the nature of interpleader and denied responsibility for certain types of claims. The District Court granted a temporary injunction, and later dissolved it, but the injunction was restored and the cause sent back to the District Court for trial of the "second stage."

Professor Chafee then, in discussing problems as presented by this case, makes the following statement:

"At the same time, it would be undesirable to go quite so far in an automobile accident controversy as in the *Baker* case of the bankrupt broker. There the claimants were barred from suing the insured at law, and the amount of each claim against him was fixed by a court in the bankruptcy proceedings. (The second stage of the interpleader decided whether a claim so fixed was enforceable against the fund in court, and for how much.) On the other hand, in a situation like the *Klaber* case, the victims of the automobile accident should not be enjoined from suing the insured at law before a jury. That is the proper way to determine the validity and amount of each accident claim. Although claims arising out of brokerage failures are often handled in equity or bankruptcy without juries, automobile accident claims are peculiarly appropriate for jury trial. Hence, when an automobile liability insurance company is allowed to interplead, the law actions of the victims should be allowed to proceed for the purpose of determining such issues as negli-



gence, contributory negligence, and the extent of the damage, with the insurance company fighting its best. Judgments at law against the insured will then be entered on the verdicts. But the enforcement of those judgments against the insurance company and its property should be enjoined. The judgment creditors should be left to get payment from the fund in court, either ratably or according to some scheme of priority imposed by the court in accordance with prior local decisions. Thus the second stage will not be concerned with determining the validity and fixing the amount of the claims, but only with the distribution of the fund. In that task the insurance company should probably not participate."

Petitioners recognize the remarks set forth above, but then state that the remedy Professor Chafee suggests would not protect the insurer. Petitioners contend that Professor Chafee's solution was rejected by the courts in the *Revere* and *Adams* decisions *supra*, when, in fact, the *Revere* case did not discuss it and the *Adams* case did go part way.

It is difficult to understand petitioners' position that "multiple litigation" must be avoided at all costs, and yet, on pages 34 and 35 of petitioners' brief it is represented that a jury trial would be saved to the claimants. If it be correct that claimants are entitled to jury trials, and although petitioners do not so state, we assume separate jury trials on the question of damages, it would not appear that any great saving would result. If petitioners are contending that there would be one jury trial regarding liability and the in-



dividual damage claims, the injured parties would then be deprived of their jury trial. See comments on this subject, 63 Yale Law Journal, 493, commencing at page 494.

The solution arrived at by the Court in *Travelers v. Greyhound*, supra, if interpleader is appropriate in this cause, would best protect and preserve the rights of the various parties.

That portion of the court's decision entitled "Conclusion" is as follows:

"The various damage suit claimants and cross-complainants are free to pursue their respective actions. However, no judgment is to be executed against Travelers as to the \$325,000 policy involved in this litigation except through petition in this Court in this proceeding. That does leave open the question of how long this restriction is to apply. It is our intention to continue this stay of execution against Travelers as to this fund until the other court proceedings have been finalized. Then we would, if All Woods and/or Travelers are absolved from liability, permit Travelers to reclaim its \$325,000. If, on the other hand, judgments are rendered against Travelers, either directly or through All Woods' coverage, we would proportionately divide the \$325,000 among the claimants as their interest may appear. If Greyhound establishes its rights by way of contribution and/or indemnity in the retained 'fund,' then its proportionate interest could be equitably divided along with other claimants proceeding directly against the fund at the time final judgments are obtained. This relief would protect

Travelers against any dangers incident to paying off the first final judgment, and it further avoids a race to final judgment among the various 'claimants' to the fund."

Might we outline the results of such a decision?

1. The injured parties would retain the right to a jury trial, both against the insured and the joint tortfeasor, with the liabilities of each and damages, if any, determined by a jury;

2. The injured parties would retain the right to choose the forum of the actions;

3. The insurance company would be protected from the possibility of being required to pay more than its policy limits;

4. The insured would be guaranteed that the insurance company would defend the actions.

It is respectfully submitted that in the balancing of the equity as between all of the parties involved in this cause, the position of Greyhound Lines, Inc., should be ignored. A brief statement of this petitioner's standing appears on page 7, footnote 3, of petitioners' brief. As indicated, this petitioner contends the maintenance of interpleader by State Farm "would provide a convenient proceeding in which to resolve some or all of the claims against Greyhound." May we again state that convenience to a joint tortfeasor should not be the basis for this Court's determination of jurisdiction of the cause or the form of the restraining order.

**CONCLUSION**

Respondents submit that the decision of the Ninth Circuit Court of Appeals should be affirmed on the grounds that the Court does not have jurisdiction of the subject matter, either because the injured defendants were not claimants or because of lack of jurisdiction of necessary parties. If the Court determines that jurisdiction should be retained, respondents submit that the equities in this case are such as demand a restraining order limiting the injured parties from executing against State Farm and its insured, but authorizing the maintenance to judgment of separate actions against the individual and the joint tortfeasor, Greyhound.

Respectfully submitted,

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Counsel for Respondent

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# In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 391

STATE FARM FIRE AND CASUALTY  
COMPANY and GREYHOUND LINES, INC.,  
*Petitioners,*

v.

KATHERINE TASHIRE, EVA SMITH, HARRY  
SMITH, LILLIAN G. FISHER, BARBARA  
McGALLIAND, DORIS ROGERS, GAIL R. GREGG,  
RICHARD L. WALTON, heir of SUE WALTON,  
and DONALD WOOD,

*Respondents.*

## APPENDIX TO RESPONDENTS' BRIEF

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## **APPENDIX A**

**28 USC § 1335 (June 25, 1948, c. 646, 62 Stat. 931):**

(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of \$500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of \$500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of \$500 or more, if

(1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if (2) the plaintiff has deposited such money or property or has paid the amount or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.

(b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

**28 USC § 1397 (June 25, 1948, c. 646, 62 Stat. 936):**

Any civil action of interpleader or in the nature of interpleader under section 1335 of this title may be brought in the judicial district in which one or more of the claimants reside.

**28 USC § 2361 (June 25, 1948, c. 646, 62 Stat. 970; May 24, 1949, c. 139, § 117, 63 Stat. 105)**

In any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action until further order of the court. Such process and order shall be returnable at such time as the court or judge thereof directs, and shall be addressed to and served by the United States marshals for the respective districts where the claimants reside or may be found.

Such district court shall hear and determine the case, and may discharge the plaintiff from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment.



**APPENDIX B**

**Rule 4(e), Federal Rules of Civil Procedure (as amended January 21, 1963, effective July 1, 1963), Process, Serve Upon Party Not Inhabitant of or Found Within State.**

Whenever a statute of the United States or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state in which the district court is held, service may be made under the circumstances and in the manner prescribed by the statute or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this rule. Whenever a statute or rule of court of the state in which the district court is held provides (1) for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, or, (2) for service upon or notice to him to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of his property located within the state, service may in either case be made under the circumstances and in the manner prescribed in the statute or rule.

**Rule 4(i), Federal Rules of Civil Procedure (as amended January 21, 1963, effective July 1, 1963), Alternative Provisions for Service in a Foreign Country.**

(1) **Manner.** When the federal or state law referred to in subdivision (e) of this rule authorizes service upon a party not an inhabitant of or found within the state in which the district court

is held, and service is to be affected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the district court or by the foreign court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(2) Return. Proof of service may be made as prescribed by subdivision (g) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1) (D) of this subdivision, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

**Rule 22, Federal Rules of Civil Procedure (as amended  
Dec. 29, 1948, effective Oct. 20, 1949)**

(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(2) The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by Title 28, U.S.C., §§ 1335, 1397, and 2361. Actions under those provisions shall be conducted in accordance with these rules.

**APPENDIX C****Oregon Revised Statutes, 23.230. Proceeds of casualty and indemnity insurance attachable on execution.**

Whenever a judgment debtor has a policy of insurance covering liability, or indemnity for any injury or damage to person or property, which injury or damage constituted the cause in which the judgment was rendered, the amount covered by the policy of insurance shall be subject to attachment upon the execution issued upon the judgment.

**Oregon Revised Statutes, 736.320, Bankruptcy clause required in certain liability policies.**

No policy of insurance against loss or damage resulting from accident to or injury suffered by an employee or other person and for which the person insured is liable, or against loss or damage to property caused by horses or by any vehicle drawn, propelled or operated by any motive power, and for which loss or damage the person insured is liable, shall be issued or delivered to any person in this state by any corporation, authorized to do business in this state, unless there shall be contained within such policy a provision substantially as follows: Bankruptcy or insolvency of the assured shall not relieve the company of any of its obligations hereunder. If any person or his legal representative shall obtain final judgment against the assured because of any such injuries, and execution thereon is returned unsatisfied by reason of bankruptcy, insolvency or any other cause, or if such judgment is not satisfied within 30 days after it is rendered, then such



person or his legal representatives may proceed against the company to recover the amount of such judgment, either at law or in equity, but not exceeding the limit of his policy applicable thereto.

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In the  
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**OCTOBER TERM, 1966**

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LILLIAN G. FISHER, BARBARA McGALLIAND, DORIS  
ROGERS, GAIL R. GREGG, RICHARD L. WALTON, heir  
of SUE WALTON, and DONALD WOOD,**

*Respondents.*

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**In the Supreme Court  
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**OCTOBER TERM, 1966**

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**No. 391**

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**STATE FARM FIRE AND CASUALTY COMPANY and  
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R. GREGG, RICHARD L. WALTON, heir of SUE WALTON, and  
DONALD WOOD,**

*Respondents.*

---

**PETITIONERS' REPLY BRIEF**

---

**INTRODUCTION**

Respondents suggest nothing in support of the jurisdictional conclusion of the court below to which a response should be made. They do, however, raise other questions not passed upon by that court: (1) Whether the action should be dismissed for lack of personal jurisdiction over the Canadian claimants (Resp Br 13-18); and (2) whether the personal injury actions against the insured should proceed in state courts, the interpleader injunction being limited to protecting the fund against execution (Resp Br 20-29).

**The action should not be dismissed for lack of personal jurisdiction over the Canadian claimants.**

Respondents seek affirmance on the ground, ignored by the court below, that the district court lacked personal jurisdiction over the Canadian claimants, who were served by registered mail under Rule 4(e) and (i), Federal Rules of Civil Procedure.<sup>1</sup> While petitioners have suggested that the Court should remand the case to the Court of Appeals for determination of that question,<sup>2</sup> it can, of course, consider it.<sup>3</sup>

There are two questions: (1) Whether the Canadian claimants are indispensable parties to the action under amended Rule 19, Federal Rules of Civil Procedure; and (2) whether, if they are, service under Rule 4(e) and (i) was not an authorized and effective means of effectuating process issued for "all claimants" under 28 USC § 2361.<sup>4</sup>

**a. The Canadian claimants are not indispensable parties to the action.**

**1. Indispensable parties whose absence requires**

1. Respondents do not attack the sufficiency of proof of service on the Canadian claimants, which would not affect its validity in any case. Rule 4(g), Fed R Civ Proc.

2. Pet Br 42; *Polizzi v. Cowles Magazines*, (1953) 345 US 663 at 667.

3. *Langnes v. Green*, (1931) 282 US 531. We respectfully suggest that the Court, having accepted the case to resolve a conflict between the circuits and decide an important question of federal jurisdiction, should not leave those matters unresolved.

4. Material parts of Rules 4 and 19 are set forth in the Appendix, infra 16-19.

dismissal of the action were defined in *Shields v. Barrow*, (1854) 17 How (58 US) 130 at 193 as

"\* \* \* Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience."<sup>5</sup>

Long before the 1966 amendments to Rule 19, it was established that the question in each case is controlled by practical considerations; the court will adjudicate the issues among the persons before it, provided this can be done effectively without prejudicing the rights of absent, though interested, persons.<sup>6</sup>

Under the 1966 amendment to Rule 19, effective July 1, 1966,<sup>7</sup> the standard is even more practical. A determination of indispensability can be made only upon consideration of all the circumstances, particularly the practical consequences of proceeding without the absent persons.

"\* \* \* The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him

5. See also *State of Washington v. United States*, (CCA 9 1936) 87 F2d 421 at 427-428.

6. *Bourdieu v. Pacific Oil Co.*, (1936) 299 US 65 at 70-71, reh den (1936) 299 US 622; *Waterman v. Canal-Louisiana Bank Co.*, (1909) 215 US 33 at 49; *Shaughnessy v. Pedreiro*, (1955) 349 US 48 at 54.

7. The amendment is applicable to this case by order of the Court of February 28, 1966. Moore, Rules Pamphlet (1966) p 1.

or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder."<sup>8</sup>

2. Judged by these controlling standards, the Canadian claimants are not indispensable parties to the action. If jurisdiction is not secured over them, they will not be bound by any judgment in the case and their claims against Clark and his insurer will not be affected by it. Any determination by the district court that the American claimants are (or are not) entitled to share in the fund created by State Farm's deposit will not amount to an adverse determination of the Canadian claims, nor would such determination bind them if one were made.<sup>9</sup> *N.Y. Life Ins. Co. v. Dunlevy*, (1916) 241 US 518, relied on by respondents, held that the claim of an absent person to the surrender value of a life insurance policy was personal and could not be adjudicated without personal jurisdiction. It did not hold that the interpleader judgment was a nullity as to the claims of persons who were before the state court; nor did the

8. These "pragmatic considerations" have been "drawn from the experience revealed in the decided cases." Advisory Committee Notes, Moore, Rules Pamphlet (1966) pp 521-522.

9. See *Brown v. American Nat. Bank*, (CA 10 1952) 197 F2d 911 at 914.



Court suggest that the insurance company could recover money which it had paid under that judgment.

3. We recognize that in some circumstances, as where the stakeholder is sued by a claimant to the fund, absent claimants have been held to be indispensable.<sup>10</sup> In some cases, if the action is *in rem* the right of an absent person may be effectively impaired; if it is *in personam* there is a risk of double liability, resulting from inconsistent decisions. These, however, are pragmatic, not conceptual considerations,<sup>11</sup> and under the standards of the new rule they are not controlling in an interpleader action brought by a liability insurer seeking relief against all claimants who can be served in the United States.

It is true that proceeding to judgment will not give the insurer the benefits of interpleader as to the Canadian claims. It will sustain a continuing obligation to defend them if they should be asserted and a risk of multiple liability if it should later be found to have proceeded in "bad faith". This, however, is a decision the insurer should be allowed to make. In many cases, after considering the number and value of the foreign

10. *U. S. v. Bank of New York Co.*, (1936) 296 US 463 at 480; *Williams v. Bankhead*, (1874) 19 Wall (86 US) 563 at 570-572.

11. One of the reasons for the 1966 amendment was to remove language in the original rule which

" \* \* \* directed attention to the technical or abstract character of the rights or obligations of the persons whose joinder was in question, and correspondingly distracted attention from the pragmatic considerations which should be controlling."

Advisory Committee Notes, Moore, Rules Pamphlet (1966) p 519.

claims and the other circumstances, it will be willing to forego the protection which a court might give a defendant resisting the claims of fewer than all of the claimants. It will assume these risks and still seek the protection of interpleader as to the majority of claimants who can be served.

4. The Canadian claims against State Farm are distinguishable from Mrs. Dunlevy's on another ground. For those claims are—and always have been—subject to prior exhaustion of the policy proceeds by settlement of other claims (Pet Br 28-29). Thus, the insurer's deposit of the policy limits into court is in fact a means of paying claims up to the policy limits, and nobody suggests that the Canadians are indispensable to that process. In *New England Mut. Life Ins. Co. v. Brandenburg*, (DC SD NY 1948) 8 FRD 151 at 154, Judge Knox stated:

“\* \* \* the courts are wary of the danger of permitting contradictory judicial orders being directed to a single fund, but are not so disturbed where the only possible inconsistency is that of two persons whose claims appear to be similar, one may ultimately recover and the other may not. Thus most frequently there must be a single fund or res involved before a court will rule that there are indispensable parties. \* \* \*

“Even where there is a single fund or res, the court will ‘strain hard’ to find interests to be separable so that an action need not be dismissed. \* \* \*”

Permitting this action to continue among the parties before the Court will not foreclose any legal interest of the Canadian claimants or any claim they may have against Clark and his insurer.<sup>12</sup> The interpleader action may, of course, indirectly affect the Canadian claimants, for a court-administered distribution of the fund among successful American claimants will deprive them of the shares they might have received if they had appeared in the action. That risk, however, that the fund would be paid to others, is one they have always carried; they can avoid it by appearing and suffer no legal injury if they do not.

“\* \* \* An absent party may also be prejudiced by the parties’ *acting in accordance* with a decree or judgment, as when a fund is distributed to creditors. But this prejudice does not result from the fact that the absentee is bound by the judgment, but because the practical value of a later suit by him may be impaired by the change of out-of-court circumstances. The prospect of such impairment is indeed a factor to be considered in determining who should be joined, *i.e.*, who are necessary parties. \* \* \*

But the sole fact of such impairment is not ground for refusing to proceed, any more than the fact that a debtor’s payment of a judgment will impair his ability to pay others is ground for refusing to pro-

12. There is, therefore, no need to enter the current controversy over the scope and effect of the 1966 amendment to Rule 19. See, generally, *Provident Tradesmens B. & T. Co. v. Lumbermens Mut. Cas. Co.*, (CA 3 1966) 365 F2d 802, pet cert pdg; Fink: *Indispensable Parties*, 74 Yale L J 403 (1965); Reed; *Compulsory Joinder of Parties*, 55 Mich L Rev 327, 483 (1957); Moore, Rules Pamphlet (1966) pp 524-526.

ceed with a creditor's suit."<sup>13</sup> (emphasis in the original)

5. Manifestly, permitting the action to proceed will not prejudice the American claimants, whose *pro rata* shares of the deposited policy limits will be increased by the absence of the Canadian claimants. It is of no concern to them that the insurer may subsequently be subjected to separate claims by the Canadians. *New England Mut. Life Ins. Co. v. Brandenburg*, supra, (DC SD NY 1948) 8 FRD 151 at 155; *Developments—Multi-party Litigation*, 71 Harv L Rev 874 at 881, 882 (1958). Nor will it prejudice the insured, whose coverage will have been extended as far as circumstances permit and who will be entitled to a defense of any claims which may subsequently be asserted by the Canadians.

6. If the district court cannot determine the rights of those who are before it for lack of jurisdiction over the Canadian claimants, all parties are denied the benefit of the Federal Interpleader Act. *Dunlevy* will continue to present insurers with the problem of the absent claimant. In this case, State Farm will be required to defend a multiplicity of actions and there will be an inequitable division of the fund, thereby frustrating important purposes of statutory interpleader. In the absence of compelling circumstances which are not

13. Hazard: *Indispensable Party*, 61 Col L Rev 1254 at 1288-1289, fn 183 (1961). See also: Note, 65 Harv L Rev 1050 at 1053 (1952).



present in this case, a determination that absent parties are indispensable should not be made where it will deprive the plaintiff of any effective remedy.<sup>14</sup>

**b. Personal jurisdiction was secured over the Canadian claimants under Rule 4(e) and (i), Federal Rules of Civil Procedure.**

1. Section 2361 of the Judicial Code (28 USC § 2361) provides that in an interpleader action under § 1335 the district court

“\* \* \* may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action \* \* \*”

Respondents contend that this comprehensive grant of authority to issue process for all claimants is reduced and limited by the provision elsewhere in § 2361 that process shall be served by the United States marshals in districts where the claimants reside or are found.<sup>15</sup>

14. See Rule 19; *Stumpf v. Fidelity Gas Co.*, (CA 9 1961) 294 F2d 886 at 891-892; *Zwack v. Kraus Bros. & Co.*, (CA 2 1956) 237 F2d 255 at 259-260. Cases relied on by respondents are distinguishable on this ground. In *Republic of China v. American Exp. Co.*, (DC SD NY 1952) 108 F Supp 169 at 170 the court held that foreign service under § 1655 would permit the action to continue, and in *Metropolitan Life Insurance Company v. Dumpson*, (DC SD NY 1961) 194 F Supp 9 the court noted that after dismissal the Commissioner could proceed under a seizure warrant against the policy proceeds and bar the claim of the absent claimant.

15. This is apparently the position in the Southern District of New York. *Kuerschner and Rauchwarenfabrik v. New York Trust Co.*, (DC SD NY 1954) 126 F Supp 684 at 689 (dictum; proceedings under Rule 22(1) FRCP); *Cordner v. Metropolitan Life Insurance Company*, (DC SD NY 1964) 234 F Supp 765 at 767 (dictum); *Aetna Life Ins. Co. v. DuRoure*, (DC SD NY 1954) 123 F Supp 736 at 739-740. Cf. *Agricultural Ins. Co. v. The Lido of Worcester*, (DC Mass 1945) 63 F Supp 799 at 801 (“Process may run at least throughout all the states”).

Thus, as to foreign claimants process can issue but cannot be served, and interpleader must be denied and the action must be dismissed if there is a single nonresident claimant.<sup>16</sup> This position is not responsive to the *Dunlevy* problem and makes the availability of interpleader depend on the accident of national residence, however clear the nonresident's "contacts" with the forum.

Respondents read the statute too narrowly, and contend for a construction which would substantially impair the remedy Congress sought to create. The scope of § 2361 should be determined from its terms. While it does not provide a mode of service upon persons outside the United States, its provision that process may issue for *all* claimants unquestionably grants jurisdiction to issue process running to all such persons, wherever they are. Consequently, any requirement that foreign service be expressly or impliedly<sup>17</sup> authorized by statute is satisfied,<sup>18</sup> and since § 2361 contains "no

16. Since 1948, "adverse claimants" in actions under § 1335 have included non-citizens by express reference to the amended definition of diverse citizenship in § 1332.

17. Foreign service under "long arm" statutes not providing for it was sustained in *United States v. Montreal Trust Company*, (DC SD NY 1964) 35 FRD 216 and *Magnaflux Corporation v. Foerster*, (DC ND Ill 1963) 223 F Supp 552. Professor Moore says:

" \* \* \* decisions have permitted service to be made in foreign countries even where such statutes and rules of court do not specifically mention service outside the United States, so long as their language does not preclude the possibility of such service." 2 Moore's Federal Practice (2d Ed 1966) 1297 (§ 4.45)

18. No such requirement is contained in the rule and to imply one seems clearly opposed to this Court's view of Rule 4 as stated in *Mississippi Pub. Corp. v. Murphree*, (1946) 326 US 438 at 444-446. See also *Hanna v. Plumer*, (1965) 380 US 460 at 471-472. The Advisory Committee, however, suggests that statutory authority is necessary. Advisory Committee Notes, 28 USC FRCP (1966 Supp) at 73.

provision \* \* \* prescribing the manner of service" on foreign claimants, the means of serving such process on claimants who are outside the United States is found in Rule 4(e) and (i). A clearer example of the proper operation of that rule could scarcely be stated.

2. No constitutional objection to service under Rule 4(i) has been asserted by respondents, nor do the facts of this case present any question of Fifth Amendment limitations on the exercise of federal jurisdiction over nonresidents.<sup>19</sup> The Canadian claimants were in the United States at the time of the accident and will have to return to the United States if they wish to proceed against Clark or his insurer. The interest of the United States in protecting its citizens through the availability of statutory interpleader is real and is responsive to insistent problems. The Canadian claimants have been given actual and reasonable notice of the proceeding and an opportunity to be heard;<sup>20</sup> the circumstances of the case do not visit unusual hardship on them, and it is not offensive to "traditional notions of fair play and substantial justice"<sup>21</sup> that their claims against the policy proceeds should be included in the action with those

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19. See *First Flight Company v. National Carloading Corporation*, (DC ED Tenn 1962) 209 F Supp 730 at 738; Green: *Federal Jurisdiction of Corporations*, 14 Vand L Rev 967 at 981 (1961).

20. *Mullane v. Central Hanover Tr. Co.*, (1950) 339 US 306 at 313-314.

21. *Internat. Shoe Co. v. Washington*, (1945) 326 US 310 at 320.

of the American claimants whose claims are unquestionably before the district court.

Service under Rule 4(i) effectively brought the Canadian claimants before the court.

## II.

**The injunction should not be limited to restraining execution on the policy proceeds.**

Respondents' remaining contention is far removed from the question of subject-matter jurisdiction which is the principal question before the Court. Tacitly admitting the district court's jurisdiction, they seek to limit the interpleader injunction to protect only the deposited fund from execution, allowing the personal injury actions against the insured to proceed elsewhere. *Travelers Indemnity Company v. Greyhound Lines, Inc.*, (DC WD La 1966) 260 F Supp 530. Petitioners have previously pointed out (Pet Br 38-42) that such procedure would guarantee multiple litigation and reduce the benefits of interpleader jurisdiction. Its practical consequences should be clearly understood.

1. The suggested procedure will not only eliminate much of the benefit of interpleader by preserving the multiple litigation which respondents find so attractive; it will, in addition, unnecessarily delay payment of compensation to any of the claimants. Distribution



of the fund to any claimant will wait upon the necessities of the slowest state docket and the last claim to be tried. If the personal injury cases are handled separately in many state courts while the insurance fund, which in most cases is the only source of compensation, lies dormant in the registry of the district court, the problems of settlement will be enormously increased. Nor will the essentially adverse interests of the claimants to the fund be reflected at the trials in evidence or contentions by which each seeks to reduce the claims of the others. No one will benefit from such a bob-tailed remedy, and this includes the claimants.

2. The importance of consolidating the trials of the personal injury claims must be emphasized. Interpleader should be regarded as a desirable and necessary jurisdiction in mass tort cases to protect all of the parties and the courts, and it should not be given a narrow or unfriendly construction. The reality of the situation is that the insurer is necessarily involved up to the policy limits and can reduce its heavy litigation expense, in the absence of interpleader, only by settling claims on an individual and non-prorated basis, leaving most of the claimants without any relief at all. This is one of the principal benefits of interpleader to the insurer, who is the only party which can invoke the Act. If interpleader will not permit at least a measure of consolidation of the personal injury claims, the remedy

will have lost a substantial part of its utility. Except in cases where circumstances create a substantial risk of multiple liability, a limited injunction offers the insurer little but a further increase in its already-heavy litigation costs. We suggest that consolidation of the claims is a desirable objective, and that the Court should not recognize interpleader jurisdiction as sound judicial policy and, in the same breath, build fences around it which limit its usefulness.

### CONCLUSION

The question of subject-matter jurisdiction which brought this case into the Court has achieved truly substantial proportions. Nobody wants to talk about it except petitioners. Respondents have made no serious effort to support the "direct action" analysis of the court below and are primarily interested in creating limitations upon this desirable and necessary federal jurisdiction which will destroy it. If the Court should decide to go beyond the jurisdictional holding necessary to dispose of the case and discuss the trial procedures to be followed in other situations, it should conclude that respondents' suggestions are without merit and should not be adopted.

It is clear that respondents' appeal to the court below based on the alleged lack of jurisdiction over the Canadian defendants was insubstantial, and it has

gained nothing in this Court. We do not presume to say whether the Court should remand the case for determination of the issue or decide it at this point; it is sufficient that it does not provide a basis for affirming the decision of the court below. That judgment should be reversed.

Problems arising from mass torts are not easily solved. Yet they are serious, and the feeling is strong that there must be a better way to handle them than the unfair, unwieldy, ineffective and costly techniques which have customarily been used. They require solutions extending over state lines, and this necessarily means solutions in the federal courts, which alone have the necessary procedures and jurisdiction to join claims and dispose of them, together with the assets available to satisfy them, fairly. This Court should welcome interpleader jurisdiction and make it an available and effective remedy in such cases.

Respectfully submitted,

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*Counsel for Petitioners*

JAMES H. CLARKE

OTTO R. SKOPIL, JR.

J. D. BURDICK

*of Counsel*

February 8, 1967

**APPENDIX****(Rules of Civil Procedure  
for the  
United States District Courts)****(Effective September 16, 1938, as amended)****Rule 4. Process.**

\* \* \* \*

(e) Same [Summons]: Service Upon Party Not Inhabitant of or Found Within State. Whenever a statute of the United States or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state in which the district court is held, service may be made under the circumstances and in the manner prescribed by the statute or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this rule. Whenever a statute or rule of court of the state in which the district court is held provides (1) for service of a summons, or a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, or (2) for service upon or notice to him to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of his property located within the state, service may in either case be made under the circumstances and in the manner prescribed in the statute or rule.

(f) Territorial Limits of Effective Service. All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held, and, when authorized by a statute of the United States or by these rules, beyond the territorial limits of that state. \* \* \*

\* \* \* \*



**(i) Alternative Provisions for Service in a Foreign Country.**

**(1) *Manner.*** When the federal or state law referred to in subdivision (e) of this rule authorizes service upon a party not an inhabitant of or found within the state in which the district court is held, and service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the district court or by the foreign court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

**(2) *Return.*** Proof of service may be made as prescribed by subdivision (g) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1)(D) of this subdivision, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(As amended Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966.)

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**Rule 19. Joinder of Persons Needed for Just Adjudication.**

(a) **Persons To Be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) **Determination by Court Whenever Joinder Not Feasible.** If a person as described in subdivision (a) (1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) **Pleading Reasons for Nonjoinder.** A pleading asserting a claim for relief shall state the names, if known

to the pleader, of any persons as described in subdivision (a) (1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

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# **In the Supreme Court**

**of the United States**

**OCTOBER TERM, 1966**

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**No. 391**

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**STATE FARM FIRE AND CASUALTY  
COMPANY and GREYHOUND LINES, INC.,**  
*Petitioners,*

**v.**

**KATHERINE TASHIRE, EVA SMITH, HARRY  
SMITH, LILLIAN G. FISHER, BARBARA  
McGALLIAND, DORIS ROGERS, GAIL R.  
GREGG, RICHARD L. WALTON, heir of  
SUE WALTON, and DONALD WOOD,**  
*Respondents.*

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## **BRIEF AMICUS CURIAE**

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GREGG, RICHARD L. WALTON, heir of  
SUE WALTON, and DONALD WOOD,**  
*Respondents.*

## **BRIEF AMICUS CURIAE**

Brief Amicus Curiae filed on behalf of the following attorneys at law who represent defendants-claimants in the case of General Fire and Casualty Company v. Greyhound Lines, Inc., et al, in the United States District Court for the District of Oregon, Civil No. 66-205:

**ANDERSON & GEARY, Oakland, California;  
BERKLEY, RANDALL & HARVEY, Berkeley, California;  
McDANNELL BROWN, Portland, Oregon;  
DEVIN, HUTCHINSON & PETERSON, Seattle,  
Washington; GORDON & RIPPLE, Spokane, Wash-**

ington; HOBERG, FINGER, BROWN & ABRAMSON, San Francisco, California; KING, MILLER, ANDERSON, NASH & YERKE, Portland, Oregon; GEORGE LUOMA, Roseburg, Oregon; MIROYAN, MOORE, KRICHEBERG & PITAGORA, San Jose, California; MORGAN, BEAUZAY, WYLIE, FERRARI & LEAKY, San Jose, California; AGNESS PETERSON and GEORGE VAN NATTA, St. Helens, Oregon; QUACKENBUSH, DEAN, BESCHEL & SMITH, Spokane, Washington; REITER, DAY & WALL, Portland, Oregon; ROETHLER & DUNN, Kelso, Washington; SABIN, DAFOE & NEWCOMB, Portland, Oregon; WILLIAM F. SCHULTE, Portland, Oregon; PETER C. STERNBERGER, San Francisco, California; TOOZE, POWERS, KERR, TOOZE & PETERSON, Portland, Oregon; TRUEHAFT & WALKER, Oakland, California.

### INTEREST OF AMICUS CURIAE

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The several attorneys making up Amicus Curiae are attorneys for many of the injured and representatives of decedents who received injuries or died as a result of a Greyhound bus accident which occurred December 23, 1965, near Medford, in southern Oregon. Their clients and all of the other potential claimants from the accident have been named as parties defendant in a case filed in the United States District Court for the District of Oregon, *General Fire and Casualty Company v. Greyhound Lines, Inc., et al*, Civil No. 66-205. The case was filed under the Federal Interpleader Act (28 U.S.C. Sec. 1335).



The plaintiff in that case is a liability insurer which wrote the primary liability insurance coverage (with policy limits of \$500,000) covering the operations of Greyhound Lines, Inc.

Since April 12, 1966, all the actual or potential claimants in that case have been enjoined by the court from prosecuting their cases against Greyhound; the relief sought by the plaintiff and Greyhound in that case is that all claimants be required to try their cases in that one case on the alleged ground that the policy limits are insufficient to cover all possible claims.

Amicus Curiae are interested in the decision to be rendered in the case at bar because it will necessarily have an important impact on their pending case and also on their practice of law in personal injury cases. They seek to bring to the attention of the Court additional circumstances and consequences of any decision in this case which should receive consideration by the Court in reaching its decision and writing its opinion.

The more specific purposes or requests of Amicus Curiae are set forth in the Preliminary Statement, below. Certain facts involved in their case and similar cases are cited throughout the brief in order to provide this Court with a clearer view of the significance of its decision.

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## SUMMARY OF ARGUMENT

1. Allowance of the interpleader relief sought would cause an unwarranted extension of federal jurisdiction and give the tort-feasor and insurer an unwarranted advantage in choosing the forum.
2. Allowance of the interpleader relief sought here may produce a pattern of liability insurance coverage bringing numerous cases to the federal courts.
3. The remedy here sought should be restricted to cases in which there is a legitimate doubt of the sufficiency of the tort-feasor's assets.
4. Provision should be made for claimants to waive or deny any claims to the proceeds of the policy and thereby disprove their status as adverse claimants.
5. All of the interpleader purposes of the statute and Rule 22 may be fulfilled by limiting the injunction to proceedings against the insurer.

## ARGUMENT

### Preliminary Statement

In the western United States, and perhaps in other parts of the nation, liability insurance companies faced with multiple-claim personal injury situations have recently filed cases similar to this one seeking to invoke federal interpleader jurisdiction un-

der the Federal Interpleader Act (28 U.S.C. Sec. 1335 and 2361) or Rule 22(1) of the Federal Rules of Civil Procedure. In form such actions seek to determine the proper division of the insurance proceeds on the ground that the liability of the insured *may* exceed the policy limits. However, the relief sought is *not only* protection of the insurance company from possible double liability but also the litigation in that forum and that case of the validity and amounts of all personal injury or wrongful death claims that have been or might be asserted against the insured. Typically, all liability of the alleged tort-feasor insured (and consequently of the insurer), is denied.

Some of the cases—apparently all but one of the reported cases — have involved situations in which there was or is a substantial possibility that the valid claims of the injured might exceed the combined total of the policy limits and the assets of the insured. In such cases either some valid claims may have to go unsatisfied or the insurance company will have to pay more than its policy limits, so the court might well be called upon to prorate or otherwise divide the insurance proceeds. The case at bar is such a case because the policy limits are only \$20,000 and the asserted claims exceed \$1,000,000 (R. 4). Although Petitioner Greyhound Lines, Inc., has adequate assets, there is a real possibility that it and its own driver are not liable at all and that the only party liable is the insured, defendant Clark, who was the driver of a pickup involved in a collision with the



Greyhound bus. The record does not indicate whether Clark's assets could satisfy any of the claims.

In a second category of cases recently filed, however, the division-of-insurance-proceeds justification for this procedure is, at most, theoretical, and, in reality, nonexistent. For instance, in the case in which these *Amicus Curiae* are involved<sup>1</sup> there was no other vehicle. The accident involved only a Greyhound bus. The only alleged tort-feasors are Greyhound Lines, Inc., and its employee driver; and the record conclusively establishes that Greyhound's net worth is "substantially more . . . than necessary to satisfy all known claims asserted . . ."<sup>2</sup> Furthermore, in that case (1) the plaintiff insurance company is a wholly owned subsidiary of The Greyhound Corporation, as also is the insured-tort-feasor, Greyhound Lines, Inc., and (2) there is excess liability insurance with an insurer not involved in the case.<sup>3</sup>

If cases in the second category just described are allowed to succeed, *Amicus Curiae* foresee a major, inappropriate and unwise innovation in the law of personal injury litigation and in the writing of liability insurance.

*Amicus Curiae* sought and obtained authority from this court to file this brief because of their con-

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<sup>1</sup> *General Fire and Casualty Company v. Greyhound Lines, Inc., et al*, in the United States District Court for the District of Oregon, Civil No. 66-205.

<sup>2</sup> See Appendix A.

<sup>3</sup> *Ibid.*

cern that the peculiarly narrow issues presented in the case at bar might result in a decision which would not furnish appropriate guidance to the lower courts faced with many questions raised by these kind of cases: On the one hand the decision could leave all the broader more fundamental issues completely unresolved. At the other extreme, the case might result in an opinion interpreted as having ruled upon some of the broader issues when the facts of this case do not provide an appropriate vehicle for ruling on all of them.

This case could well be resolved on the narrow issue, to be raised in this court for the first time in Respondents' Brief, of the lack of personal jurisdiction over some of the adverse claimants who are Canadian citizens and on whom the only service of process was made in Canada, and that without following the service provisions of 28 U.S.C. § 2361.<sup>4</sup>

On the other hand, the broad issue as tendered by Petitioners and the opinion of the Court of Appeals concerns jurisdiction over the subject matter — whether this kind of action can ever be brought under the Federal Interpleader Act or Rule 22(1) of the

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<sup>4</sup> See R. 73-86. The history of the Federal Interpleader Act, beginning with *New York Life Insurance Co. v. Dunlevy* (1916) 241 U.S. 518, shows that we are dealing here with an *in personam* liability, not an *in rem* proceeding. So, personal jurisdiction over all the claimants to the so-called "fund" is essential. See generally, 3 *Moore's Federal Practice* (2d. ed.) Par. 22.06, pp. 3034-3040. The insurance company-plaintiff having failed to obtain that jurisdiction, the action should fail and, consequently, the decision below for dismissal should be affirmed.

Federal Rules of Civil Procedure.<sup>5</sup> Although the Court of Appeals answered the question in the negative, it is our understanding that it was neither briefed nor argued in that court.

Of course, this court could simply reverse that decision on the ground that there can be situations in which some kind of interpleader relief is available and remand the case to the Court of Appeals for consideration of all other issues. However, for the reasons stated below, we urge that any reversal should be in one of two forms:

(1) It should be narrowly circumscribed so as not to be susceptible of the interpretation that all such interpleader actions may be brought and that all the relief obtained here is approved, regardless of the assets of the alleged tort-feasors-insured, regardless of the actual or probable adversity of the claimants to the "fund" and regardless of the relationship of the insurer and insured; or

(2) It should take account of what the insurance companies and common carriers are *really* trying to accomplish in this case, and indicate some guidelines or limitations for this truly major development in multiple-injury litigation and federal jurisdiction.

We believe there are a number of practical and

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<sup>5</sup> See Pet. Br. p. 2 and *Tashire, et al, v. State Farm Fire and Casualty Company and Greyhound Lines, Inc.* (9 Cir., 1966) 363 F.2d 7, 10.

legal considerations which demonstrate the inappropriateness of the use of interpleader jurisdiction in this kind of case when there is no question of the sufficiency of the insured's assets to respond to all the claims. In practical effect allowance of interpleader, at least with all the results sought, causes an adverse shift in procedure, favorable to the insurers and unfavorable to the claimants. We believe such shift would be an unwarranted extension of federal jurisdiction; would be subversive of important state policies; would not improve judicial administration; and is contrary to the language of the Federal Interpleader Act and Rule 22(1).

**Allowance of the Interpleader Relief Sought Would Cause  
an Unwarranted Extension of Federal Jurisdiction and  
Give the Tort-feasor and Insurer an Unwarranted  
Advantage in Choosing the Forum.**

The most important relief obtained in the case at bar and that sought in the cases recently filed is an injunction against all the personal injury and wrongful death claimants or potential claimants, restraining them from filing or prosecuting actions against the *insured* except in the case in which the interpleader action is filed. Inasmuch as the forum is ordinarily chosen by the personal injury plaintiff, the availability of the interpleader remedy would shift that right to the defense.

Some of the advantages that the defense seeks to



obtain by this procedure and the reasons why they should not be given are the following:

1. *Wrongful Death Limitation and Measure of Damages.* Probably the principal motivation for the defense wishing to select the forum is to obtain the most favorable wrongful-death limitation or measure of damages. Thus, in the case at bar, the accident occurred in Northern California. The injured were residents of California, Oregon, Washington, South Dakota and Canada, and the dead were residents of Washington and Canada (R. 2, 3). California verdicts are notoriously higher than those in the other states and California has no limitation on the recovery for wrongful death. Invoking the provisions of 28 U.S.C. Sec. 1397 authorizing venue in statutory interpleader to be laid in any district in which one of the so-called adverse claimants resides, the plaintiff insurer filed in the District of Oregon — a state in which personal injury verdicts are relatively low and which has a \$25,000 limitation on recovery for wrongful death.\*

Then in the case in which *Amicus Curiae* are involved, the accident occurred in southern Oregon; the 14 dead and 25 or more injured were from California, Oregon and Washington. Again Greyhound's insurer filed in the District of Oregon—the only one of the three states with a limitation on recovery for wrongful death.

In most of the states of the Union the question of

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\* Ore. Rev. Stat. 30.020.

the choice of law for the damages recoverable for wrongful death when there are "contacts" with more than one state is unresolved, and such is the case in Oregon. Under the trend of recent decisions, if a wrongful death action is brought in the courts of the decedent's residence, that court is entitled under some circumstances to apply its own rule as to limitation or non-limitation of recoveries for wrongful death.

*Kilberg v. Northeast Airlines, Inc.* (1961) 9 N.Y.2d 34, 172 N.E.2d 526.

*Pearson v. Northeast Airlines, Inc.* (2 Cir., 1962) 309 F.2d 553, cert. den. 372 U.S. 912.

*Babcock v. Jackson* (1963) 12 N.Y.2d 473, 191 N.E.2d 279, 95 A.L.R.2d 1.

See Speiser, *Recovery for Wrongful Death* (Lawyers Coop. 1966) pages 721-731.

As stated in *Babcock* the trend is to give controlling effect to "the law of the jurisdiction which, because of its relationship or contact with the occurrence *or the parties*, has the greatest concern with the specific issue raised in the litigation." (191 N.E.2d at p. 283; emphasis ours.)

If the policies underlying these decisions are worthy of respect, and we believe they are, they should not be circumvented by allowing the defense to choose a forum which lacks "the greatest concern with the specific issue raised." The right to resort to the courts exists for providing a proper remedy. It is wrong to sacrifice this objective in the name of efficiency.

The result of allowing the erstwhile defense to select a federal forum in multiple-claim cases is to give

the federal courts the task of charting the course of *state policy* with respect to this important question of conflicts of law. The determination of such issues by the federal courts is not their proper role.

*Klaxon Co. v. Stentor Electric Mfg. Co.* (1941)  
313 U.S. 487.

See also the opinion of Chief Judge Henley in *Underwriters at Lloyd's v. Nichols* (D.C. E.D. Ark., 1966) 250 F. Supp. 837, 840-841 (rev'd. 363 F.2d 357).

It is even more inappropriate for a federal court of one district to deprive the courts of another state or district of the right to determine such policies.

There are also differences in the measure of damages in such actions which are subject to similar considerations.

Speiser, *supra* pp. 721-730, 739.

2. *Chance of Finding Non-Liability of Insured.* Petitioners decry the allowance of the "haphazard trial of separate suits" which may reach different results on the question of liability and urge the "substantial savings" which may result from consolidating 35 personal injury trials via interpleader (Pet. Br. pp. 27, 31). Closer examination of the problem, however, indicates that their suggested cure may be worse than the disease.

In the first place, there are important state policies on the question of liability which, like those on the measure or limit of damages, may be circumvented

by allowing the insurer-defense to select the single forum.

See *Babcock v. Jackson* (1963) 12 N.Y.2d 473, 191 N.E.2d 279, 95 A.L.R.2d 1.

*Macey v. Rozbicki* (1966) 18 N.Y.2d 289, 221 N.E.2d 380.

Again, uniformity is not necessarily a desirable or proper objective.

Second, a single trial may impede the sound policy of encouraging voluntary settlements by inducing the insurer faced with a very weak defense to take a one-in-ten chance of relieving itself of liability by going to trial. And it may be expected that no holds will be barred and no expense forgone in the preparation and trial of the insured's case. Claimants, lacking a single manager for their litigation and already at a disadvantage because of their financial limitations, are placed in a more unfavorable position. Thus, trials of multiple-injury cases would become virtually certain and settlement would be discouraged.

Amicus Curiae believe that the Oregon case in which they are involved again furnishes an illustration: The Greyhound bus spun out of control December 23, 1965, on a new Interstate Highway, for no apparent reason other than excessive speed under adverse weather conditions. Greyhound's liability seems probable. Prior to the time it and its affiliate corporation-insurer (or their common parent corporation) decided upon the interpleader course of action, Greyhound was diligently engaged in seeking settlements,



and in fact accomplished three settlements.<sup>7</sup> Since April 12, 1966, when its insurer obtained a restraining order against all possible claimants from prosecuting pending and possible cases, no known settlement discussions have taken place. Indeed, they have been expressly refused on the ground that the existence of the restraining order makes them "impossible," but that, if the other cases are allowed to proceed, settlement discussions will be had.<sup>8</sup>

It is obvious that the courts as we know them could not function if it were not for the fact that something over 95 percent of the personal injury and death claims are settled prior to trial.<sup>9</sup> We therefore submit that Petitioners' proposed use of the Interpleader Act to improve judicial administration in personal injury litigation would not accomplish that objective but would interfere with the important policy favoring settlements.

3. *Jury Trial.* Petitioners say (Pet. Br. pp. 33-36) that allowance of this remedy and requiring the trial of all the claims in an interpleader case will not deprive the claimants of a jury trial. We are not so sure, and the cases cited in Petitioners' Brief support our concern. Petitioners' concession is heartening but un-

<sup>7</sup> See Appendix B.

<sup>8</sup> See Appendix C.

<sup>9</sup> See Herman, "Legal Costs to Insurance Companies and How They Can Be Reduced," *Ins. Law Jour.* No. 494, pp. 133, 145 (March, 1964); Doryland, "Legal Costs to Insurance Companies—a Second Look," *Ins. Law Jour.*, No. 502, pp. 652, 662 (November, 1964); and Appleman, "A Speedier Remedy in Personal Injury Cases," *Ins. Law Jour.*, No. 476, pp. 551, 559 (September, 1962).

fortunately it is not binding on other insurers who may be expected to make the opposite contention in future cases.

In any event, it is apparent that the "jury trial" Petitioners have in mind is not the same one the claimants are ordinarily entitled to—an unhurried thoughtful deliberation by a jury regarding one or 'two persons' injuries or loss, as opposed to a "three ring circus" of 35 cases with 20 or 30 lawyers in which the jury may be intimidated by the volume and complexity of the issues and the overwhelming amounts of money involved.

4. *Convenience of Trial.* We disagree with Petitioners' estimate that the insurer's choice of forum through the use of interpleader in personal injury cases will cause inconvenience to the claimants "only infrequently." (Pet. Br. p. 38). The statement simply ignores plain facts of life—that the cost of litigation is of vital concern to both claimant and insurer and is frequently used as a powerful weapon.

There are important reasons for not disturbing the present rule under which the claimant chooses the the forum most convenient to him. He does not expect to be injured and has no reason to make financial preparations for trial elsewhere. On the other hand, the defense fully expects such cases and, like the insurer and Greyhound involved in this case, can usually defend about as readily in one state or court as another. That was the risk they intended to assume when they went into business and the organizational

efforts and arrangements made for it are, indeed, elaborate and expensive.

In summary, allowing the interpleader remedy with all the consequences sought by Petitioners would shift to the insurer-defense the power to select the forum in multi-state, multi-injury situations. It would circumvent the right of states to enforce important state policies regarding rules of liability and damages (most notably the wrongful death limitation) and would frequently and inappropriately involve federal courts in determining these policies. Settlements would be discouraged and the trial of weak defenses would become virtually certain. The jury trial would be eliminated or seriously diluted and the convenience of trial would be made to suit those least in need of it.

## II

### **Allowance of the Interpleader Relief Here Sought May Produce a Pattern of Liability Insurance Coverage Bringing Numerous Cases to the Federal Courts**

We urge the court to consider whether, if this remedy is approved to the extent of requiring all the personal injury claims to be tried in the single case, such will be the signal for a major innovation in the liability insurance business and a substantial shift of personal injury litigation to the federal courts.

Again an illustration is the Oregon case in which Amicus Curiae are involved. As discussed below the record of that case establishes that the policy limits

of the primary insurer (the interpleader-plaintiff) is only \$500,000 but that Greyhound has excess liability insurance and that such insurance or Greyhound's assets alone are more than sufficient to satisfy all known claims. That record also establishes that the institution of the interpleader action "was agreed upon in advance by plaintiff and The Greyhound Corporation or defendant Greyhound Lines, Inc., as a means of furthering the interests and purposes of all or both of them \* \* \*."<sup>10</sup>

Greyhound is involved in the case at bar and two other similar cases known to us<sup>11</sup> and it is obvious that it is very interested in establishing the insurance companies' right to interplead. Why? Because it would benefit *its own* claims handling business.

Furthermore, carried to its logical conclusion, petitioners' proposal would allow virtually every other business operation and its insurers to structure the insurance coverage so as to virtually guarantee that a federal interpleader case could be filed whenever there were two or more significant injuries: By writing an initial policy in one insurer for very low limits, and excess coverage in a different company, the same coverage could be provided and all or many of the procedural advantages here sought could be obtained. Under the Federal Interpleader Act, all that is said

<sup>10</sup> See Appendix A.

<sup>11</sup> These two are the Oregon case in which Amicus Curiae are involved and the Louisiana case, *Travelers Indemnity Company v. Greyhound Lines, Inc.*, et al, (D.C. W.D. La., 1966) 260 F. Supp. 530 (Adv. Sh.).



to be required is two or more claimants who reside in different states and whose combined claims exceed the limits of the *primary* insurer. For cases involving residents of only one state, the only diversity of citizenship required by Rule 22(1) is between the insurance company plaintiff and the other parties.

So also, large organizations which would ordinarily be self-insurers could obtain policies with nominal limits and thereby secure the same advantages with respect to claims of much greater importance than the insurance policy which furnishes the formal justification for invoking the "interpleader" procedure.

We submit that to allow the *form* of the equitable remedy of interpleader to be used for this *collateral* purpose is to allow the tail to wag the dog.

### III

#### **The Remedy Here Sought Should Be Restricted to Cases in Which There is Legitimate Doubt of the Sufficiency of the Tort-feasor's Assets**

The Federal Interpleader Act expressly requires that there be "adverse claimants" who "are claiming or may claim" the same fund (28 U.S.C. § 1335(a)(1)). Rule 22(1) applies only if the interpleader-plaintiff "is or may be exposed to double or multiple liability." We agree with Petitioners (Pet. Br. p. 23) and the Eighth Circuit (*Underwriters at Lloyds v. Nichols* (8 Cir., 1966) 363 F.2d 357, 365-366) that these words mean about the same thing. We submit, however, that the statute and rule speak of a *real*

possibility of adversity and a *real* possibility of double liability.

Thus, in *Commercial Union Insurance Co. of New York v. Adams* (S.D. Ind., 1964) 231 F. Supp. 860, claims for 70 deaths and 300 injuries must surely have exceeded the primary and excess insurance and the assets of the insureds, for the court found the claimants "adverse" to each other and compared the situation to "100 persons adrift in the ocean with but one small life boat in sight" and said "each claimant is interested in reducing or defeating the claim of every other claimant." (231 F. Supp. at 863). In *Pan American Fire & Casualty Company v. Revere* (D.C. E.D. La., 1960) 188 F. Supp. 474, the court found that the claimants "are *in fact* competing for a fund which is not large enough \* \* \*." (188 F. Supp. at pp. 480-481; emphasis ours).

In *Underwriters at Lloyds v. Nichols* (D.C. E.D. Ark., 1966) 250 F. Supp. 837, rev'd. 363 F.2d 357, the District Court denied interpleader against several cotton farmers who claimed against one crop sprayer on the ground that the claims against the insurer were "doubly contingent." The second contingency, after liability of the insured, was "it developing that [the insured] is not financially able to satisfy judgments against him or to reduce them to an aggregate sum" within the policy limits (250 F. Supp. at pp. 840-841). The Eighth Circuit reversed and emphasized the "*may be exposed to double or multiple liability*" terminology of Rule 22(1) and the

"may claim" terminology of 28 U.S.C. Section 1335 (a)(1). However, the court's opinion still leaves the reader with the distinct impression that it was concerned with the real, though not immediate, possibility of double liability of the insurers arising from the insufficiency of the insured's assets; and it emphasized that the claimants were *really* seeking the insurance money. (See 363 F.2d at p. 364.)

As mentioned above, if the proposed remedy is approved without limitation to realities, Greyhound and other larger organizations may utilize ridiculously low policy limits for the very purpose of obtaining the procedural advantages here at stake. Yet how can it be said straight-facedly that any claimant cares about or seeks the \$500,000 policy written for Greyhound by its sister corporation? In such case the requisite adversity is absent and there isn't a scintilla of possibility that the insurer will have to pay more than its policy limits.

#### IV

#### **Provision Should be Made for Claimants to Waive or Deny Any Claim to the Proceeds of the Policy and Thereby Disprove Their Status as Adverse Claimants**

If a theoretical rather than actual possibility of adversity of the claimants is all that is required under the statute or rule, there would appear to be no escape from the dire consequences of forum-shopping predicted above. Yet a court of equity with the power to consolidate 35 personal injury cases in the name of

interpleader must surely have the power to allow conditional relief from its order.

Amicus Curiae therefore propose that in any reversal of the decision below the court's opinion should save the right of a claimant who wishes to renounce any possible future claim against the insurer to make that election, and be enjoined from making such claims.

It is true that such waiver or disclaimer could not be binding as between the insurer and insured and that the insured undoubtedly would retain the right to require its insurance carrier to discharge its obligations under the policy. The point is, however, that the insured's rights would be limited to those specified in the policy and such procedure would guarantee against double liability of the insurer. And the "possibility" of double liability was the only justification for the interpleader procedure in the first place.

## V

### **All of the Interpleader Purposes of the Statute and Rule 22 May Be Fulfilled by Limiting the Injunction to Proceedings Against the Insurer**

Amicus Curiae concede that there can be situations in which it would be desirable to divide the insurance proceeds under court supervision rather than on a race-to-the-courthouse, first-come, first-served basis. Their difficulty with Petitioners' proposed solutions is that they go far beyond the necessities of the case—and are calculated more to reduce the claims than to divide insurance proceeds.



With Respondents, Amicus Curiae urge to the court that the golden mean solution has been charted by the decision of the District Court in *Travelers Indemnity Company v. Greyhound Lines, Inc., et al* (D.C. W.D. La., 1966) 260 F. Supp. 530 Adv. Sh. (now on appeal to the Fifth Circuit), which found some jurisdiction but decided it was limited to the fund. Consequently it restricted the remedy to enjoining the claimants from levying or proceeding against the insurer without further leave of court.

The result reached also accords with that proposed by Professor Chafee in 1940 with respect to the proper scope of a decree in interpleader:

"... automobile accident claims are peculiarly appropriate for jury trial. Hence, when an automobile liability insurance company is allowed to interplead, the law actions of the victims should be allowed to proceed for the purpose of determining such issues as negligence, contributory negligence, and the extent of the damage, with the insurance company fighting its best. Judgments at law against the insured will then be entered on the verdicts. But the enforcement of those judgments against the insurance company and its property should be enjoined. The judgment creditors should be left to get payment from the fund in court, either ratably or according to some scheme of priority imposed by the court in accordance with prior local decisions." (Chafee, *Federal Interpleader Since the Act of 1936*, 49 Yale L. J. 377, 420-421)

## CONCLUSION

Any decision of the court in this case, other than an affirmance on the ground of failure to obtain personal jurisdiction over the Canadian residents, will have an important impact on personal injury litigation practice and procedure and the judicial administration of such cases. Amicus Curiae recognize that there are cases in which liability insurers should be entitled to invoke federal interpleader jurisdiction in advance of determination of the liability of the insured. However, even in such cases the relief should be restricted to enjoining proceedings against the insurer and the subsequent division of the fund, if necessary.

Interpleader jurisdiction should not be transformed into a device to obtain injunctions against prosecution of ordinary tort actions in forums selected in the usual manner. Such transformation would cause an unwarranted and inappropriate extension of federal jurisdiction, circumvent the enforcement of important state policies and eliminate or seriously dilute the claimants' procedural rights.

Amicus Curiae urge the court to take note of the foregoing in its opinion.

Furthermore, the court's opinion should hold that the interpleader remedy is not available at all in cases in which excess liability insurance or the insured's assets are obviously sufficient to satisfy all claims. Alternatively, it should provide for a disclaimer by any

claimant who claims no benefits under the insured's liability policy and is satisfied to look only to the insured.

Respectfully submitted,

**MARK C. McCLANAHAN**  
Counsel for Amicus Curiae

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APPENDIX

## APPENDIX A

"IN THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT  
OF OREGON

GENERAL FIRE AND CASU-)	)	Civil
ALTY COMPANY, a	)	No. 66-205
corporation,	)	ANSWER TO
	)	REQUESTS
Plaintiff,	)	FOR
v.	)	ADMISSIONS
	)	OF FACTS BY
GREYHOUND LINES, INC.,	)	DEFEND-
a corporation, et al.	)	ANT GREY-
Defendants.)	)	HOUND
	)	LINES, INC.

"Comes now defendant Greyhound Lines, Inc. and makes the following responses to the requests for admissions of facts of defendants Charles C. Van Blake, Lynton C. Spink and Mary Ann Burke:

"Request 1 (a)

'Plaintiff and defendant Greyhound Lines, Inc., are both wholly owned subsidiaries of the Greyhound Corporation, a Delaware corporation.'

"Answer to Request 1 (a): Admitted.

Request 1 (b):

'The chairman of each of the boards of directors of plaintiff, The Greyhound Corporation, and defendant, Greyhound Lines, Inc., is F. W. Ackerman and the president and

chief executive officer of the Greyhound Corporation, G. H. Trautman, is a member of plaintiff's board of directors.'

"Answer to Request 1 (b) : Admitted.

\* \* \* \* \*

"Request 2 (a) :

'The institution of this proceeding was agreed upon in advance by plaintiff and the Greyhound Corporation or defendant Greyhound Lines, Inc., as a means of furthering the interests and purposes of all or both of them and Greyhound Lines, Inc., supports and does not oppose the relief sought by plaintiff herein.'

"Answer to Request 2 (a) : Admitted.

\* \* \* \* \*

"Request 4 (a) :

'Defendant Greyhound Lines, Inc., has substantially more net worth than is or may be necessary to satisfy all known claims asserted against it, including those which have been or are likely to be asserted arising from the accident of December 23, 1965, described in the complaint herein.'

"Answer to Request 4 (a) : Admitted."

"Request 4 (b) :

'At the time of said accident defendant Greyhound Lines, Inc., had and now has in effect other liability insurance with respect to claims arising from said accident which, when added to the coverage afforded under the policy described in the complaint and the net worth of said defendant, is substantially

more than is or may be necessary to satisfy all known claims asserted against said defendant, including those which have been or are likely to be asserted arising from the accident of December 23, 1965, described in the complaint herein.'

"Answer to Request 4 (b) : Admitted."



## APPENDIX B

**"IN THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT  
OF OREGON**

<b>GENERAL FIRE AND CASU-</b>	)	Civil No.
<b>ALTY COMPANY, a</b>	)	66-205
<b>corporation,</b>	)	
	<b>Plaintiff,</b>	<b>PLAINTIFF'S</b>
<b>v.</b>	)	<b>ANSWERS</b>
<b>GREYHOUND LINES, INC.,</b>	)	<b>TO INTER-</b>
<b>a corporation, et al.</b>	)	<b>ROGATORIES</b>
	<b>Defendants.)</b>	

"Plaintiff answers the interrogatories of defendant Lynton C. Spink, individually, and Lynton C. Spink as administrator of the estate of Zella-Jane Spink, deceased, as follows:

\* \* \* \* \*

**"INTERROGATORY NO. 7: State the names and addresses of every claimant and the amount of each and every claim that has been paid by the General Fire and Casualty Company as damages to either the person or property arising out of the Greyhound bus accident occurring on or about December 23, 1965, at or near Medford, Oregon, and which is the subject matter of this action.**

**"ANSWER: None. There have been several claims arising out of this bus accident that have been settled prior to the time that the interpleader**

suit was filed. These settlements, however, will be for the account of Greyhound Lines, Inc., since the filing of the interpleader suit and bond in the policy limit of General Fire and Casualty Company."

\* \* \* \* \*

**APPENDIX C**

Letter from attorneys for Greyhound Lines, Inc.,  
to attorneys for Robin Cox, et al, one of the claimants  
named as defendants in General Fire and Casualty  
Company v. Greyhound Lines, Inc., et al.

**"CARROLL, DAVIS, BURDICK & McDONOUGH**  
Counselors and Attorneys at Law  
420 Balfour Building  
San Francisco, California 94104  
Telephone (415) 981-0380

September 9, 1966

**"Mr. Malcolm Bernstein**  
Treuhaft & Walker  
Attorneys at Law  
1440 Broadway  
Oakland, California 94612

Re: Robin Cox, et al. v. Greyhound

**"Dear Mr. Bernstein:**

**"Your communications of August 16 and September 6, 1966, have been received. I was on vacation from early August to just the last day or so and have not therefore been earlier able to respond.**

**"The problem with regard to any possible settlement of any of the claims arising out of this accident is simply this—Greyhound's insurer in this case, namely, the General Fire and Casualty Company of New York, has filed an interpleader action in the Federal District Court in Oregon and I am sure that you and your client have been**

served with papers in this matter. I understand they have deposited a bond in the full amount of their policy in the sum of \$500,000.00 to be distributed by the Federal District Court amongst the various claimants, if the court should decide that this is a case of liability. At the same time, the court has enjoined everybody from taking any action whatever with regard to the matter and it appears to me, therefore, that settlement of the case is impossible at the present time.

"You may also have been advised that in a very similar type proceeding a similar restraining order was reversed by the United States Circuit Court but a petition for writ of certiorari has been directed to the United States Supreme Court seeking a review of the matter. The court has not yet acted upon the application for the writ. I am also led to understand that if the Supreme Court does not give any assistance in that case that the Federal District Court intends to vacate the restraining order in this action, at which time it would be possible to discuss settlement.

"I trust that this sufficiently explains our inability to enter into any fruitful negotiations at this time. We will certainly keep the matter in mind and when, as and if it becomes possible, will be in touch with you.

Very truly yours,

CARROLL, DAVIS, BURDICK & McDONOUGH  
/s/ J. D. BURDICK"



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**In the Supreme Court**

OF THE

**United States**

OCTOBER TERM, 1966

**No. 391**

STATE FARM FIRE AND CASUALTY COMPANY  
and GREYHOUND LINES, INC.,

*Petitioners,*

vs.

KATHERINE TASHIRE, EVA SMITH, HARRY  
SMITH, LILLIAN G. FISHER, BARBARA MC-  
GALLIAND, DORIS ROGERS, GAIL R. GREGG,  
RICHARD L. WALTON, heir of SUE WAL-  
TON, and DONALD WOOD,

*Respondents.*

**MOTION FOR LEAVE TO FILE RESPONSE TO  
BRIEF AMICI CURIAE**

and

**PETITIONERS' REPLY BRIEF TO BRIEF AMICI CURIAE**

JOHN GORDON GEARIN,  
Eighth Floor, Pacific Building,  
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J. D. BURDICK,  
420 Balfour Building,  
San Francisco, California 94104,

*Counsel for Petitioner  
Greyhound Lines, Inc.*

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# In the Supreme Court

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OCTOBER TERM, 1966

No. 391

STATE FARM FIRE AND CASUALTY COMPANY  
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*Petitioners,*

vs.

KATHERINE TASHIRE, EVA SMITH, HARRY  
SMITH, LILLIAN G. FISHER, BARBARA MC-  
GALLIAND, DORIS ROGERS, GAIL R. GREGG,  
RICHARD L. WALTON, heir of SUE WAL-  
TON, and DONALD WOOD,

*Respondents.*

## MOTION FOR LEAVE TO FILE RESPONSE TO BRIEF AMICI CURIAE

Greyhound Lines, Inc. moves the Court for leave to file a brief in response to the brief amici curiae.

In support of its motion, applicant represents to the Court as follows:

1. A petition for certiorari was granted herein on October 10, 1966. The petitioners' brief was filed with the Clerk of this Court on December 9, 1966. Amici

curiae served upon petitioners their motion for leave to file brief amici curiae and tendered said brief on January 20, 1967. On February 1, 1967, petitioners received advice from the Clerk of the Court advising that oral argument would be held the week of February 13, 1967. On February 10, 1967, petitioners filed their reply brief. On February 13, 1967, the Court granted the motion of amici curiae, whose brief was thereupon filed.

2. The brief amici curiae is devoted almost exclusively to matters not heretofore urged in either the District Court or Court of Appeals and which were not urged by respondents in their brief in this Court.

3. The contentions of amici curiae could not be met in argument on summary calendar. Absent leave to respond to these contentions, as here requested, petitioners will be wholly deprived of an opportunity to respond to the arguments of amici curiae as set forth in their brief.

4. The brief in response to the brief of amici curiae will contain no matter or argument found in any brief heretofore filed in this proceeding nor covered by oral argument.

Dated, San Francisco, California,  
March 1, 1967.

Respectfully submitted,

JOHN GORDON GEARIN,

J. D. BURDICK,

*Counsel for Petitioner*

*Greyhound Lines, Inc.*

# In the Supreme Court

OF THE  
United States

OCTOBER TERM, 1966

No. 391

STATE FARM FIRE AND CASUALTY COMPANY  
and GREYHOUND LINES, INC.,

*Petitioners,*

VS.

KATHERINE TASHIRE, EVA SMITH, HARRY  
SMITH, LILLIAN G. FISHER, BARBARA MC-  
GALLIAND, DORIS ROGERS, GAIL R. GREGG,  
RICHARD L. WALTON, heir of SUE WAL-  
TON, and DONALD WOOD,

*Respondents.*

## PETITIONERS' REPLY BRIEF TO BRIEF AMICI CURIAE

### INTRODUCTION

Amici curiae in their brief tacitly admit that petitioner State Farm Fire and Casualty Company is plainly entitled to the relief provided by the Federal Interpleader Act (c. 646, 62 Stat 931, 28 USC § 1335). Having so tacitly admitted, they suggest a variety of supposed reasons (none of which have heretofore



in these proceedings been raised) as to why the exercise by the District Court of such interpleader jurisdiction would be unwise in this particular case or in the alternative why, if the District Court is to be permitted to exercise its jurisdiction, a variety of inhibitions should be imposed (apparently by order of this Court) upon the District Court in its exercise of that jurisdiction.

Before dealing with these contentions in detail, there are certain introductory matters which should be discussed.

The insinuation<sup>1</sup> to the effect that State Farm and Greyhound are parties to some sinister scheme or plot and seek by this proceeding to somehow deprive the claimants other than Greyhound of their rights to a fair trial is wholly improper. Greyhound was properly joined as a defendant in these proceedings by State Farm because it has, along with the other claimants, substantial claims against State Farm's assured and the fund on deposit with the District Court.<sup>2</sup> The fact that Greyhound, after having been

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<sup>1</sup>At page 8 of their brief, amici curiae state as follows:

"However, for the reasons stated below, we urge that any reversal should be in one of two forms:

(2) It should take account of what the insurance companies and common carriers are *really* trying to accomplish in this case, and indicate some guide lines or limitations for this truly major development in multiple-injury litigation and federal jurisdiction." (Emphasis in the original.)

<sup>2</sup>Greyhound's driver was severely injured in the accident and Greyhound has paid to him in excess of \$15,000.00, under the Workmen's Compensation laws of California, which sum it is entitled to recover from Clark and the fund. In addition, Greyhound's bus valued in excess of \$30,000.00, was totally destroyed.

properly brought into the action as a defendant-claimant, has decided that the interpleader procedure would be beneficial to it, and to all parties, including all claimants and therefore now supports the action and appears before this Honorable Court in an effort to convince this Court that the exercise of interpleader jurisdiction here will be beneficial to State Farm, all of the claimants, Greyhound, the courts, and the public in no wise alters the fact that these proceedings were commenced independently by State Farm on its own behalf.

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### ARGUMENT

#### ALLOWANCE OF THE INTERPLEADER RELIEF WOULD NOT CAUSE AN UNWARRANTED EXTENSION OF FEDERAL JURISDICTION, NOR WOULD IT GIVE ANY TORT-FEASOR OR ANY INSURANCE COMPANY ANY UNWARRANTED ADVANTAGE IN CHOOSING A FORUM

At pages 9 through 16 of their brief, amici curiae suggest that allowance of interpleader in the instant case will: (1) permit State Farm, on behalf of itself and its assured, to shop for a forum which imposes a maximum limitation on recovery for wrongful death; (2) prevent interested states from imposing their own policies upon the question of liability and will discourage settlement; (3) may deprive the injured parties of a jury trial; (4) result in inconvenience to the plaintiffs who are not resident in Oregon because they will have to come to Oregon to try their cases. We will hereafter seek to answer each of these contentions in order.

## FORUM SHOPPING

More than two-thirds of all the personal injury and death claims arising out of this accident are already subject to federal jurisdiction by reason of diversity of citizenship. If not filed in federal courts by the injured parties or heirs of decedents, they could be removed to federal courts. Thus there cannot be any serious contention that recognition of the right of interpleader in this case will permit forum shopping as between the state and federal jurisdictions.

The suggestion that jurisdiction should be denied in this action because of potential conflict of laws problems (the exact nature of which is impossible to determine since the given law of states changes from day to day) entirely overlooks the history and purpose of the Federal Interpleader Act. Conflict of laws problems are not unique to unliquidated tort claims. Conflict questions arise whenever citizens and residents of different states litigate in non-resident states, regardless of the type of claim. Indeed the leading case on choice of law questions in interpleader actions, *Griffin v. McCoach*, 313 U.S. 498 (1941) is a non-tort action involving the right of an estate to share in the proceeds of an insurance policy.

Knowing this, Congress nevertheless explicitly provided that a party could bring an action in interpleader or in the nature of interpleader in the district wherever a party of diverse citizenship resided and added a provision for extraterritorial service of process so that all interested parties could be joined.

The argument of amici curiae is, therefore, nothing more than an attack upon the passage of the Interpleader Act rather than a reason for denying jurisdiction in this particular case. Congress answered this argument in 1917.

But if the Court wishes to consider hypothetical conflict of laws questions in a jurisdictional determination, it is readily apparent that the horrors posed by amici curiae are products of fantasy rather than judicious scrutiny.

Amici curiae suggest that if interpleader is allowed in Oregon, the wrongful death limitation imposed by the Oregon statute (Ore. Rev. Stat. 30.020) will be applied to cases where the decedent was a resident of some state which does not impose such limitation. The suggestion is entirely misplaced. *Griffin v. McCoach*, supra, 313 U.S. 498 (1941), established the rule that in an interpleader action the federal district court will apply the choice of law rule of the state in which it sits. Thus the District Court in this case will, in accordance with *Griffin*, apply the choice of law rule of Oregon. Oregon follows the rule of *lex loci delictus* (*Nadeau v. Power Plant Engineering Co.*, 216 Ore. 12, 337 P. 2d 313 [1959]; *Williamson v. Weyerhaeuser Timber Co.*, 221 F. 2d 5 [9th Cir. 1955]; *Bowles v. Barde Steele Company*, 177 Ore. 421, 164 P. 2d 692 [1945]) and would therefore adopt the law of California, inasmuch as California was the place where the accident occurred. As California imposes no limitation on the recovery for wrongful death, none would be imposed by the District Court.



Amici curiae are doubtless more concerned about the case in which they are involved as counsel, where the accident occurred in Medford, Oregon. Although we do not believe it is proper, nor indeed possible, for this Court to attempt to decide all possible issues which might arise in other and different cases, including the case in which amici curiae are involved, it may be noted that the suggestion does not even apply to their case. They note (amici curiae brief, page 10) that in the Medford cases the claimants are from California, Oregon and Washington and the interpleader is now pending in the Federal District Court in Oregon. Under *Griffin*, the District Court would therefore apply Oregon law. But the same result would follow if the actions of the various claimants were filed in their home states of California or Washington, since both follow the *lex loci delictus* rule, under which Oregon law would be applied. (*Gordon v. Reynolds*, 187 Cal. App. 2d 472 [1960]; *Victor v. Sperry*, 163 Cal. App. 2d 518 [1958]; *Loranger v. Nadeau*, 215 Cal. 362, 10 P. 2d 63 [1932]; *Mady v. Voykovich*, 46 Wash. 2d 302, 280 P. 2d 680 [1955]; *Mountain v. Price*, 20 Wash. 2d 129, 146 P. 2d 327 [1944]; *Richardson v. Pac. Power & Light*, 11 Wash. 2d 288, 118 P. 2d 985 [1941].)

Perhaps what amici curiae have in mind, despite the fact that they are representing residents of California, Washington and Oregon only, is that they may be prevented by the interpleader action from seeking a jurisdiction having no connection with the matter at all, which would apply a choice of law rule different

from that applied by either California, Washington, or Oregon. If this is their concern, then their argument amounts to no more than that claimants should be given an unrestricted license to engage in forum shopping, even if it is necessary to utterly destroy the efficacy of the Federal Interpleader Act to accomplish that result.

At pages 12 and 13, amici curiae suggest that allowance of interpleader in this action will deprive the states whose residents were involved in the accident of the right to apply important state policy on the question of liability. As we have noted, so long as all of the states in question apply the rule of *lex loci delictus*, the selection of any particular forum has no bearing whatever upon the question, as all would in this case apply California law, and in the case in which amici curiae are involved, would apply Oregon law. Reliance by amici curiae on *Babcock v. Jackson*, 12 N.Y. 2d 473, 191 N.E. 2d 279 (1963), is misguided. *Babcock* does not stand for the proposition that the forum state will apply its law regarding matters of liability *because* it is the forum state but on the contrary makes clear that the law to be applied is the law of the state which has the most significant "contracts" with the parties and issues. The forum *qua* forum is not generally considered to be a significant contact.<sup>3</sup>

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<sup>3</sup>*Tramontana v. S. A. Empresa De Viacao Aerea Rio Grandense*; 350 F.2d 468, 476 (DCC 1965); Restatement (Second), Conflict of Laws, Section 379.

*Gore v. Northeast Airlines, Inc.*, 222 F.Supp. 50 (S.D. N.Y. 1963) illustrates the point. In *Gore* the Federal District Court of New York, applying the New York "contacts" rule, as enunciated by the New York Court in *Kilberg v. Northeast Airlines, Inc.*, 9 N.Y. 2d 34, 172 N.E. 2d 526 (1961) and *Pearson v. Northeast Airlines, Inc.*, 309 F. 2d 553 (2 Cir., 1962) Cert. den. 372 U.S. 912, refused to apply New York law in a case arising out of the same tragic accident that was considered in *Kilberg* and *Pearson* because in the action before it the plaintiffs were not residents of New York but rather of Maryland and California. The Court there determined that both California and Maryland, had more intimate "contacts" with the parties and issues than did New York, that each would refer to the law of Massachusetts where the accident occurred, and therefore held that the Massachusetts wrongful death limits would apply. It is obvious, therefore, that if the so-called "contacts" rule were to be applied to questions of liability in cases of this type, forum shopping would be an exercise in futility.

At page 13 of their brief, amici curiae argue that interpleader in Portland, Oregon, will impede or "may" impede the sound policy of encouraging voluntary settlements. The assertions made in this regard are quite revealing. For example, at page 13 of their brief they suggest that if a single trial is held the defendants will present a vigorous defense. Implicit in this suggestion is, we apprehend, the suggestion that if defendants are forced to defend in thirty-five

different actions, it will be economically impossible for them, or at least economically unfeasible for them, to present a determined or adequate defense. There is nothing, of course, in the record here to suggest that defendants should not present a determined defense and indeed any policy which discourages parties in litigation from adequately and forcefully defending their position seems to us to be contrary to every concept of a civilized jurisprudence.

Baldly stated their position is that the defendants in the personal injury cases, including Greyhound, can be coerced into settling the claims being made against them if they can be subjected to thirty-five different trials, and that interpleader will deprive the plaintiffs of such "benefit". If it is a fact that unnecessarily vexatious and harassing litigation, infinitely proliferated, might induce innocent defendants to settle claims being made against them, then courts, including this Honorable Court, should be diligent in exercising whatever powers they might possess to prevent such unfortunate circumstances from arising. The suggestion of amici curiae to the contrary, is, we suggest, hardly deserving of judicial notice or consideration. It might as well be argued that a rule of law which prevented defendants from presenting any evidence in their own behalf in cases of this kind would be a strong inducement for them to settle claims being made against them. Such fact would scarcely commend such rule to any jurisprudence having pretensions to fairness, equality or justice.



the advice that one burn down the house to destroy the mice.

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**THE INTERPLEADER ACT SHOULD BE BROADLY AND LIBERALLY INTERPRETED AND APPLIED AND SHOULD NOT BE RESTRICTED OR CONFINED BY NARROW OR TECHNICAL LIMITATIONS**

Amici curiae suggest that the Interpleader Act should be narrowly confined and restricted in a number of different ways. Thus they contend that it should not be allowed where there is any legitimate doubt as to the sufficiency of the tort-feasor's assets (amici curiae brief, page 18, et seq.), that the remedy should be denied if the claimants waive or deny any claim to the proceeds of the policy (amici curiae brief, page 20, et seq.), and that the injunction should be directed solely to proceedings against the insurer (amici curiae brief, page 21, et seq.).

All of the suggestions in this vein share in common the consistent, if unstated, contention that the Federal Interpleader Act should be narrowly and grudgingly interpreted and applied. But the history of the Act and the cases interpreting it demonstrate that the true rule is quite to the contrary. In *Tallett v. Phoenix Assurance Co.*, 147 F. Supp. 597, 605 (W.D. Ark. 1956) the Court spoke as follows regarding proper approach to the Act:

"... The Federal Interpleader Act, 28 U.S.C.A. § 1335, which is a remedial statute and to be liberally construed, was designed not only to protect stakeholders from double or multiple liability but

also to protect them from the trouble and expense of double or multiple litigation. *Sanders v. Armour Fertilizer Works*, 292 U.S. 190, 54 S. Ct. 677, 78 L. Ed. 1206; *Metropolitan Life Insurance Co. v. Segaritis*, D.C. Pa., 20 F. Supp. 739; *Massachusetts Mutual Life Insurance Co. v. Weinress*, D.C. Ill., 47 F. Supp. 626; and *Mal-lonee v. Fahey*, D.C. Cal., 117 F. Supp. 259.”<sup>6</sup>

The suggestion that the remedy should not apply in the case of a solvent tortfeasor overlooks troublesome questions of fact and procedure. An insured may have money today and none tomorrow. He may be in a sound financial position, yet have no ready assets subject to attachment. In what manner and at what stage of the proceedings is the question of financial solvency to be determined? Is the Court to impound sufficient assets of the assured to guarantee payment of the claims being asserted against him? Certainly if the Congress had intended that the remedy here be limited in the manner that amici curiae suggest, it would have so provided. It is not for this Court to engraft exceptions in face of the plain statutory command.

This argument also overlooks the convenience and cost saving to the parties, public and courts, discussed earlier, in having a multitude of actions, all arising from a single accident, entirely tried and pre-tried in a single action before a single Court.

The suggestion that the remedy should not apply if the claimants waive their claims against the insur-

<sup>6</sup>This language was quoted with approval in *Underwriters at Lloyds v. Nichols*, supra, 363 F.2d 357 (8 Cir. 1966).

ance company entirely overlooks the relationship between the insurance company and its assured and would, if followed, utterly deprive the assured of the benefit of his contract.

Take, for example, the case of an insured trucker who has a \$100,000.00 policy and is faced with claims in excess of \$500,000.00 as the result of an accident involving one of his trucks. Claimant "A" disclaims any interest in the fund, files suit, and obtains a judgment against the trucker for \$25,000.00. The insurance company is forbidden by the injunction to pay and the trucker has no cash with which to pay. Claimant "A" thereupon levies execution upon the trucker's truck or trucks, which are seized by the sheriff, rendering it impossible for the trucker to gain a livelihood. In many states, if he were unable to satisfy the judgment, his driver's license and permit to operate would be suspended. All of this despite the fact that he had paid a substantial premium for his insurance coverage, which coverage is sufficient to pay the only judgment actually outstanding against him. In the meanwhile, he would still be subject to numerous other suits in different jurisdictions. If such a course were to be adopted, it is difficult to see how interpleader could ever be instituted by an insurer without exhibiting bad faith toward its insured.

The same result would of course follow from adoption of the suggestion made by amici curiae to the effect that injunctions in such cases should be limited to the protection of the insurance company's fund. The suggestion that the kind of injunction issued by

the Court in *Travelers Indemnity Co. v. Greyhound Lines, Inc., et al.*, supra, 260 F. Supp. 530, Adv. Sh. (W.D. La. 1966), truly serves the interest of claimants, in actions such as this, is, we believe, hardly deserving of serious consideration. On the Pacific Coast the statute of limitations is one year in California (Cal. Code of Civ. Proc. § 340), two years in Oregon (Ore. Rev. Stat. § 12.110) and three years in Washington (Rev. Code Wash. § 4.16.080). In an accident involving citizens of these three states, therefore, such suggested procedure would permit a Washington claimant to subject all claimants to a three year delay before his action was even filed in his state Court. The delay that might thereafter ensue could obviously further delay the resolution of his claim for periods of three, four, five or six additional years. It is hardly to be believed, we suggest, that thirty-five claimants would in fact wish to subject themselves and the ultimate resolution of their claims against the fund on dispute, to such a procedure.

If the district courts are to bobtail their injunctions as amici curiae suggest, a host of problems, some predictable and some unpredictable, will certainly arise. For example, in the instant action, amici curiae have suggested that perhaps Clark and State Farm are entitled to the protection of the injunction but that Greyhound is not because it is financially solvent. However, Clark and Greyhound have been jointly sued in some of the actions filed in California. In California there exists a right of contribution between joint tortfeasors (Cal. Code of Civil Procedure



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Commencing at page 14 of their brief, amici curiae suggest that there are serious doubts about the right of injured parties to have a jury trial if interpleader is allowed. These contentions were fully explored by petitioners in their opening brief, commencing at page 33 to and including page 36 and we shall not further burden the Court upon that subject matter now. However, amici curiae go on to suggest that even though a jury trial may be allowed, such trial, involving some thirty-five claimants, would constitute a "three ring circus", which should be avoided. Amici curiae in this regard, have either overlooked or intentionally seek to ignore the flexibility of practice before the District Court and the wide discretionary powers of the District Judge to make such rules regarding the trial procedure as he may deem necessary to secure an orderly, efficient and just disposition of the matters pending before him.

Rule 42 of the Rules of Civil Procedure permits the District Judge to order separate trials as to any of the plaintiffs, issues or claims as he, in his discretion, may find necessary or useful. In this connection the trial Judge could try separately the claims of claimants from different states if he felt that different rules of law were to be applicable, either upon the issue of liability or damages. He could group for trial together those cases involving roughly similar type injuries if he felt that this would be useful or helpful. Our federal district courts are successfully trying cases involving numerous claimants with cross-claims and counter-claims on a daily basis. There is nothing in

the literature to suggest that our district courts have been so inept in the exercise of the wide powers granted to them under the Rules of Civil Procedure as to permit multi-party litigation to be turned into a "three ring circus".

In fact, the recognition that a multitude of separate trials, in separate jurisdictions, by separate juries, with contradictory and conflicting results of claims all arising out of a single happening, is truly a "three ring circus" has prompted amendment of the Rules of Civil Procedure so that in their present form they permit and encourage consolidation of actions in such circumstances. The contribution to orderly judicial administration accomplished by consolidation of actions arising out of a single accident is particularly great in those cases where a limited fund is available to discharge the conflicting claims of many claimants. Thus, if the claimants in cases of this type are free to litigate their claims in whatever jurisdiction they may please, it is obvious that for roughly identical injuries widely divergent damage awards may ensue.

For example, a California jury might award \$500.00 for a broken wrist and a Washington jury \$5,000.00 for a substantially identical injury to a person similarly situated merely because of different local feelings of generosity or conservatism on the part of juries. In such instance, the fund is not sufficient to compensate either of the injured parties to the full extent of his verdict, but if they are to share in the fund pro rata, the Washington plaintiff will have received

ten times more for his injury than is to be received by the California plaintiff. Such results are obviously to be avoided if at all possible. The interpleader procedure permits determination of the value of each claim, not only upon its own merits, but also in relationship to the other claims, thus providing for an equitable proration of the fund.

At page 15 of their brief, amici curiae suggest that to allow interpleader will interfere with the right of an injured plaintiff to choose "... the forum most convenient to him". In the cases in which the amici curiae are interested, as has been noted, the plaintiffs come from California, Washington and Oregon. It overlooks the fact of modern transportation to argue that plaintiffs are seriously inconvenienced in traveling to any one of the Pacific Coast states in a day when travel between two states by air is often quicker than surface transportation from one point in any particular county to that county's court house.

Furthermore, the suggestion entirely overlooks the power of the Federal District Court under 28 USC Section 1404 to transfer the action for trial to whatever federal district court proves to be the most efficient and advantageous for all parties involved, including the advantage to the public. The power of transfer provided to the District Court under Section 1404 is particularly appropriate in cases involving numerous claims arising out of a single accident and this has been frequently observed by district courts in exercising such power. For example, in *Rodgers v. Northwest Airlines, Inc.*, 202 F. Supp. 309 (S.D. N.Y.



1962) a case involving numerous deaths arising out of an airplane disaster, the District Court for the Southern District of New York was asked to transfer three cases from that District to the District Court for the Northern District of Illinois, Eastern Division, sitting in Chicago, where nineteen death actions arising out of the same accident, were then pending. After first noting that "factors of public interest also have a place" in determining questions of transfer, the Court went on to say at page 13 as follows:

"The benefits and advantages to all parties in having the related actions considered in one jurisdiction under one judge are obvious. Pre-trial proceedings can be conducted more efficiently, duplication of time and effort can be avoided and the benefit to witnesses and to the parties calling them in having them attend only once at one location is plain. Furthermore, to require defendants to relitigate the issue of liability in a number of forums would be vexatious and would not serve the ends of justice. The transfer of this case to the District Court sitting in Chicago is in the interest of sound judicial administration as well as speedier and more efficient disposition of the mass of litigation arising out of this accident. The phrase in § 1404(a) 'in the interest of justice' requires that '[b] both the interest of the parties to the lawsuit as well as society in general should be considered.' *Chicago, Rock Island and Pacific Railroad Co. v. Igoe*, supra, 220 F. 2d 303."

In the instant case, experience indicates that the cost of a venire to try thirty-five separate actions

would exceed the total amount of the insurance coverage provided by the State Farm policy.<sup>4</sup>

The suggestion of amici curiae also entirely ignores substantial benefits that the claimants themselves may obtain by a single trial. If each of the thirty-five claimants is required to prove liability on his own, the cost of doing so must be repeated thirty-five times. In a single trial this cost can be shared by the claimants and thereby extremely substantial savings are possible for them.

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**ALLOWANCE OF INTERPLEADER RELIEF WOULD NOT PRODUCE ANY CHANGE IN THE PATTERN OF LIABILITY INSURANCE COVERAGE**

Amici curiae contend (amici curiae brief, pp. 16-18) that to permit interpleader in this action will encourage business operations to tailor their insurance coverage in such manner as to promote interpleader jurisdiction. It is fanciful, we submit, to speculate that responsible business men will deliberately expose themselves to excess judgments through inadequate coverage upon the remote contingency that an accident might some time occur in which interpleader jurisdiction would afford a remedy to accomplish a

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<sup>4</sup>Assuming that it would take approximately five days to try each of the cases with a jury of twelve jurors at \$10.00 per juror per day, each case will cost \$600.00 in jury fees alone, or a total of \$21,000.00. This of course does not include the cost to the public involved in providing thirty-five different court rooms, judges, bailiffs, clerks, reporters, and other necessary court attaches, nor the cost to the litigants of separately bringing to trial thirty-five different times the necessary witnesses from a number of different states. The total cost in money and human effort is in fact incalculably large.

speedy conclusion to conflicting claims and counter-claims.

Amici curiae in support of their contention point out (amici curiae brief, p. 17, f.n. 11) two interpleader actions in which Greyhound is involved, namely, *Travelers Indemnity Co. v. Greyhound Lines, Inc., et al.*, 260 F. Supp. 530 Adv. Sh. (W.D. La. 1966) and *General Fire and Casualty Co. v. Greyhound Lines, Inc., et al.* (Civil Number 66-205 pending in the United States Court for the District of Oregon).<sup>5</sup> The cases referred to, however, are very far from lending any support to amici curiae's speculation. In the Oregon case the insurance policy in question is in the sum of \$500,000.00, and in the Louisiana case the policy provided coverage in the amount of \$100,000 to the trucking company whose truck was involved in a collision with a Greyhound bus. We do not believe that it can be seriously contended that one seeking to have a token coverage purchased merely as the touchstone to interpleader jurisdiction, would buy a \$500,000.00 policy.

In any event, there is no lack of power in the District Court to protect against actual abuse when, as and if the District Court finds that this has occurred. The suggestion that interpleader should be denied in proper cases where the jurisdiction exists and the beneficial purposes of the statute are required upon the speculation that at some future date some unscrupulous business man might somehow improperly seek to invoke the jurisdiction is on a par with

<sup>5</sup>Amici curiae are counsel for various plaintiffs in this action.

§ 875), which right is solely dependent upon the existence of a joint judgment. If the personal injury claimants could proceed against Greyhound alone in California, Greyhound would be entirely deprived of its opportunity and substantive right to procure contribution from Clark and State Farm.

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### CONCLUSION

We respectfully submit that the order of the District Court in this case insures that all parties to this litigation will be fairly dealt with. To deny interpleader here or to limit the injunction as has been suggested by amici curiae would, on the other hand, guarantee confusion, delay, vexation, needless expense and congestion of court dockets, to the detriment not only of litigants herein, but the public as well.

Dated, San Francisco, California,  
March 1, 1967.

Respectfully submitted,

JOHN GORDON GEARIN,

J. D. BURDICK,

*Counsel for Petitioner*

*Greyhound Lines, Inc.*



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**OPINION**

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# SUPREME COURT OF THE UNITED STATES

No. 391.—OCTOBER TERM, 1966.

State Farm Fire & Casualty	} On Writ of Certiorari to the	
Co. et al., Petitioners,		United States Court of
v.		Appeals for the Ninth
Kathryn Tashire et al.	} Circuit.	

[April 10, 1967.]

MR. JUSTICE FORTAS delivered the opinion of the Court.

Early one September morning in 1964, a Greyhound bus proceeding northward through Shasta County, California, collided with a southbound pickup truck. Two of the passengers aboard the bus were killed. Thirty-three others were injured, as were the bus driver, the driver of the truck and its lone passenger. One of the dead and 10 of the injured passengers were Canadians; the rest of the individuals involved were citizens of five American States. The ensuing litigation led to the present case, which raises important questions concerning administration of the interpleader remedy in the federal courts.

The litigation began when four of the injured passengers filed suit in California state courts, seeking damages in excess of \$1,000,000. Named as defendants were Greyhound Lines, Inc., a California corporation; Theron Nauta, the bus driver; Ellis Clark, who drove the truck; and Kenneth Glasgow, the passenger in the truck who was apparently its owner as well. Each of the individual defendants was a citizen and resident of Oregon. Before these cases could come to trial and before other suits were filed in California or elsewhere, petitioner, State Farm Fire & Casualty Company, an Illinois corporation, brought this action in the nature of interpleader in the United States District Court for the District of Oregon.

## 2 STATE FARM CASUALTY CO. v. TASHIRE.

In its complaint State Farm asserted that at the time of the Shasta County collision it had in force an insurance policy with respect to Ellis Clark, driver of the truck, providing for bodily injury liability up to \$10,000 per person and \$20,000 per occurrence and for legal representation of Clark in actions covered by the policy. It asserted that actions already filed in California and others which it anticipated would be filed far exceeded in aggregate damages sought the amount of its maximum liability under the policy. Accordingly, it paid into court the sum of \$20,000 and asked the court (1) to require all claimants to establish their claims against Clark and his insurer in this single proceeding and in no other, and (2) to discharge State Farm from all further obligations under its policy—including its duty to defend Clark in lawsuits arising from the accident. Alternatively, State Farm expressed its conviction that the policy issued to Clark excluded from coverage accidents resulting from his operation of a truck which belonged to another and was being used in the business of another. The complaint, therefore, requested that the court decree that the insurer owed no duty to Clark and was not liable on the policy, and it asked the court to refund the \$20,000 deposit.

Joined as defendants were Clark, Glasgow, Nauta, Greyhound Lines, and each of the prospective claimants. Jurisdiction was predicated upon 28 U. S. C. § 1335, the federal interpleader statute,<sup>1</sup> and upon general diversity

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<sup>1</sup> 28 U. S. C. § 1335 (a) provides: "The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of \$500 or more, or having issued a . . . policy of insurance . . . of value or amount of \$500 or more . . . if

"(1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to



of citizenship, there being diversity between two or more of the claimants to the fund and between State Farm and all of the named defendants.

An order issued, requiring each of the defendants to show cause why it should not be restrained from filing or prosecuting "any proceeding in any state or United States Court affecting the property or obligation involved in this interpleader action, and specifically against the plaintiff and the defendant Ellis D. Clark." Personal service was effected on each of the American defendants, and registered mail was employed to reach the 11 Canadian claimants. Defendants Nauta, Greyhound, and several of the injured passengers responded, contending that the policy did cover this accident and advancing various arguments for the position that interpleader was either impermissible or inappropriate in the present circumstances. Greyhound, however, soon switched sides and moved that the court broaden any injunction to include Nauta and Greyhound among those who could not be sued except within the confines of the interpleader proceeding.

When a temporary injunction along the lines sought by State Farm was issued by the United States District Court for the District of Oregon, the present respondents moved to dismiss the action and, in the alternative, for a change of venue—to the Northern District of California, in which district the collision had occurred. After a hearing, the court declined to dissolve the temporary injunction, but continued the motion for a change of venue. The injunction was later broadened to include the protection sought by Greyhound, but modified to

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be entitled to such money or property, or to any one or more of the benefits arising by virtue of any . . . policy . . . ; and if

"(2) the plaintiff has . . . paid . . . the amount due under such obligation into the registry of the court, there to abide the judgment of the court . . . ."

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permit the filing,—although not the prosecution—of suits. The injunction, therefore, provided that all suits against Clark, State Farm, Greyhound, and Nauta be prosecuted in the interpleader proceeding.

On interlocutory appeal,<sup>2</sup> the Court of Appeals for the Ninth Circuit reversed. 363 F. 2d 7. The court found it unnecessary to reach respondents' contentions relating to service of process and the scope of the injunction, for it concluded that interpleader was not available in the circumstances of this case. It held that in States like Oregon which do not permit "direct action" suits against the insurance company until judgments are obtained against the insured, the insurance company may not invoke federal interpleader until the claims against the insured, the alleged tortfeasor, have been reduced to judgment. Until that is done, said the court, claimants with unliquidated tort claims are not "claimants" within the meaning of § 1335, nor are they "persons having claims against the plaintiff" within the meaning of Rule 22 of the Federal Rules of Civil Procedure.<sup>3</sup> In

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<sup>2</sup> 28 U. S. C. § 1292 (a) (1).

<sup>3</sup> We need not pass upon the Court of Appeals' conclusions with respect to the interpretation of interpleader under Rule 22, which provides that "(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. . . ." First, as we indicate today, this action was properly brought under § 1335. Second, State Farm did not purport to invoke Rule 22. Third, State Farm could not have invoked it in light of venue and service of process limitations. Whereas statutory interpleader may be brought in the district where any claimant resides (28 U. S. C. § 1397), Rule interpleader based upon diversity of citizenship may be brought only in the district where all plaintiffs or all defendants reside (28 U. S. C. § 1391 (a)). And whereas statutory interpleader enables a plaintiff to employ nationwide service of process (28 U. S. C. § 2361), service of process under Rule 22 is confined

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accord with that view, it directed dissolution of the temporary injunction and dismissal of the action. Because the Court of Appeals' decision on this point conflicts with those of other federal courts,<sup>4</sup> and concerns a matter of significance to the administration of federal interpleader, we granted certiorari. 385 U. S. 811 (1966). Although we reverse the decision of the Court of Appeals upon the jurisdictional question, we direct a substantial modification of the District Court's injunction for reasons which shall appear.

to that provided in Rule 4. See generally, 3 Moore, Fed. Prac. ¶ 22.04.

With respect to the Court of Appeals' views on Rule 22, which seem to be shared by our Brother DOUGLAS, compare *Underwriters at Lloyd's v. Nichols*, 363 F. 2d 357 (C. A. 8th Cir. 1966), and *A/S Kredit Bank v. Chase Manhattan Bank*, 155 F. Supp. 30 (D. C. S. D. N. Y. 1957), aff'd, 303 F. 2d 648 (C. A. 2d Cir. 1962), with *National Cas. Co. v. Insurance Co. of North America*, 230 F. Supp. 617 (D. C. N. D. Ohio 1964), and *American Indem. Co. v. Hale*, 71 F. Supp. 529 (D. C. W. D. Mo. 1947). See also 3 Moore, Fed. Prac. ¶ 22.04, at 3008 and n. 4.

<sup>4</sup> See, e. g., *Travelers Indem. Co. v. Greyhound Lines, Inc.*, 260 F. Supp. 530 (D. C. W. D. La. 1966); *Commercial Union Ins. Co. of New York v. Adams*, 231 F. Supp. 860 (D. C. S. D. Ind. 1964); *Pan American Fire & Cas. Co. v. Revere*, 188 F. Supp. 474 (D. C. E. D. La. 1960); *Onyx Ref. Co. v. Evans Prod. Corp.*, 182 F. Supp. 253 (D. C. N. D. Tex. 1959). Although *Travelers* and *Revere* were brought in Louisiana, a State which authorizes "direct action" suits against insurance companies, the statute was not relied upon in *Travelers* (see 260 F. Supp., at 533, n. 3), and furnished only an alternative ground in *Revere* (see 188 F. Supp., at 482-483).

The only post-1948 case relied upon by the Court of Appeals and respondents, *National Cas. Co. v. Insurance Co. of North America*, 230 F. Supp. 617 (D. C. N. D. Ohio 1964), turns out to be of little assistance with respect to statutory interpleader since that court denied statutory interpleader solely on the ground that all claimants were citizens of Ohio and hence lacked the required diversity of citizenship. *Id.*, at 619.

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### I.

Before considering the issues presented by the petition for certiorari, we find it necessary to dispose of a question neither raised by the parties nor passed upon by the courts below. Since the matter concerns our jurisdiction, we raise it on our own motion. *Treinies v. Sunshine Mining Co.*, 308 U. S. 66, 70 (1939). The interpleader statute, 28 U. S. C. § 1335, applies where there are "Two or more adverse claimants, of diverse citizenship . . . ." This provision has been uniformly construed to require only "minimal diversity," that is, diversity of citizenship between two or more claimants, without regard to the circumstance that other rival claimants may be co-citizens.<sup>5</sup> The language of the statute, the legislative purpose broadly to remedy the problems posed by multiple claimants to a single fund, and the consistent judicial interpretation tacitly accepted by Congress, persuade us that the statute requires no more. There remains, however, the question whether such a statutory construction is consistent with Article III of our Constitution, which extends the federal judicial power to "Controversies . . . between Citizens of different States . . . and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects." In *Strawbridge v. Curtiss*, 3 Cranch 267 (1806), this Court held that the diversity of citizenship statute required "complete diversity": where co-citizens appeared on both sides of a dispute, jurisdiction was lost. But Chief Justice Marshall there purported to construe only "The words of the act of

<sup>5</sup>See, e. g., *Haynes v. Felder*, 239 F. 2d 868, 872-875 (C. A. 5th Cir. 1957); *Holcomb v. Aetna Life Ins. Co.*, 255 F. 2d 577, 582 (C. A. 10th Cir.); cert. denied, 358 U. S. 879 (1958); *Cramer v. Phoenix Mut. Life Ins. Co.*, 91 F. 2d 141, 146-147 (C. A. 8th Cir.), cert. denied, 302 U. S. 739 (1937); *Commercial Union Ins. Co. of New York v. Adams*, 231 F. Supp. 860, 863 (D. C. S. D. Ind. 1964); 3 Moore, Fed. Prac. ¶ 22.09, at 3033.



Congress," not the Constitution itself.<sup>6</sup> And in a variety of contexts this Court and the lower courts have concluded that Article III poses no obstacle to the legislative extension of federal jurisdiction, founded on diversity, so long as any two adverse parties are not co-citizens.<sup>7</sup> Accordingly, we conclude that the present case is properly in the federal courts.

## II.

We do not agree with the Court of Appeals that, in the absence of a state law or contractual provision for "direct action" suits against the insurance company, the company must wait until persons asserting claims against its insured have reduced those claims to judgment before seeking to invoke the benefits of federal interpleader.

<sup>6</sup> Subsequent decisions of this Court indicate that *Strawbridge* is not to be given an expansive reading. See, e. g., *Louisville Railroad Co. v. Letson*, 2 How. 497, 544-556 (1844), expressing the view that in 1839 Congress had in fact acted to "rid the courts of the decision in the case of *Strawbridge* and *Curtis*."

<sup>7</sup> See, e. g., *American Fire & Cas. Co. v. Finn*, 341 U. S. 6, 10, n. 3 (1951), and *Barney v. Latham*, 103 U. S. 205, 213 (1881), construing the removal statute, now 28 U. S. C. § 1441 (c); *Supreme Tribe of Ben-Hur v. Cauble*, 255 U. S. 356 (1921), concerning class actions; *Wichita R. R. & Light Co. v. Public Util. Comm.*, 260 U. S. 48 (1922), dealing with intervention by co-citizens. Full-dress arguments for the constitutionality of "minimal diversity" in situations like interpleader, which arguments need not be rehearsed here, are set out in Judge Tuttle's opinion in *Haynes v. Felder*, 239 F. 2d, at 875-876; in Judge Weinfeld's opinion in *Twentieth Century-Fox Film Corp. v. Taylor*, 239 F. Supp. 913, 918-921 (D. C. S. D. N. Y. 1965); and in ALI, Study of the Division of Jurisdiction Between State and Federal Courts, 176-186 (Tent. Draft No. 2, 1964); 3 Moore, Fed. Prac. ¶ 22.09, at 3033-3037; Chafee, Federal Interpleader Since the Act of 1936, 49 Yale L. J. 377, 393-406 (1940); Chafee, Interpleader in the United States Courts, 41 Yale L. J. 1134, 1165-1169 (1932). We note that the American Law Institute's proposals for revision of the Judicial Code to deal with the problem of multiparty, multijurisdiction litigation are predicated upon the permissibility of "minimal diversity" as a jurisdictional basis.

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That may have been a tenable position under the 1926<sup>9</sup> and 1936 interpleader statutes.<sup>10</sup> These statutes did not carry forward the language in the 1917 Act authorizing interpleader where adverse claimants "may claim" benefits as well as where they "are claiming" them.<sup>10</sup> In 1948, however, in the revision of the Judicial Code, the "may claim" language was restored.<sup>11</sup> Until the decision below, every court confronted by the question has concluded that the 1948 revision removed whatever requirement there might previously have been that the insurance company wait until at least two claimants reduced their claims to judgments.<sup>12</sup> The commentators are in accord.<sup>13</sup>

<sup>9</sup> 44 Stat. 416 (1926), which added casualty companies to the enumerated categories of plaintiffs able to bring interpleader, and provided for the enjoining of proceedings in other courts.

<sup>10</sup> 49 Stat. 1096 (1936), which authorized "bills in the nature of interpleader," meaning those in which the plaintiff is not wholly disinterested with respect to the fund he has deposited in court. See Chafee, *The Federal Interpleader Act of 1936*: I, 45 Yale L. J. 963 (1936).

<sup>10</sup> 39 Stat. 929 (1917). See *Klaber v. Maryland Cas. Co.*, 69 F. 2d 934, 938-939 (C. A. 8th Cir. 1934), which held that the omission in the 1926 Act of the earlier statute's "may claim" language required the denial of interpleader in the face of unliquidated claims (alternative holding).

<sup>11</sup> Although the Reviser's Note did not refer to the statutory change or its purpose, we have it on good authority that it was the omission in the Note rather than the statutory change which was inadvertent. See 3 Moore, *Fed. Prac.* ¶ 22.08, at 3025-3028, n. 13. And it was widely assumed that restoration of the "may claim" language would have the effect of overruling the holding in *Klaber*, *supra*, that one may not invoke interpleader to protect against unliquidated claims. See, e. g., Chafee, 45 Yale L. J., at 1163-1167; Chafee, *Federal Interpleader Since the Act of 1936*, 49 Yale L. J. 377, 418-420 (1940). In circumstances like these, the 1948 revision of the Judicial Code worked substantive changes. *Ex parte Collett*, 337 U. S. 55 (1949).

<sup>12</sup> See cases listed at n. 4.

<sup>13</sup> 3 Moore, *Fed. Prac.* ¶ 22.08, at 3024-3025; Keeton, *Preferential Settlement of Liability-Insurance Claims*, 70 Harv. L. Rev. 27, 41-42 (1956).

Considerations of judicial administration demonstrate the soundness of this view which, in any event, seems compelled by the language of the present statute, which is remedial and to be liberally construed. Were an insurance company required to await reduction of claims to judgment, the first claimant to obtain such a judgment or to negotiate a settlement might appropriate all or a disproportionate slice of the fund before his fellow claimants were able to establish their claims. The difficulties such a race to judgment pose for the insurer,<sup>14</sup> and the unfairness which may result to some claimants, were among the principal evils the interpleader device was intended to remedy.<sup>15</sup>

### III.

The fact that State Farm had properly invoked the interpleader jurisdiction under § 1335 did not, however, entitle it to an order both enjoining prosecution of suits against it outside the confines of the interpleader proceeding and also extending such protection to its insured, the alleged tortfeasor. Still less was Greyhound Lines entitled to have that order expanded so as to protect itself and its driver, also alleged to be tortfeasors, from suits brought by its passengers in various state or federal courts. Here, the scope of the litigation, in terms of parties and claims, was vastly more extensive than the confines of the "fund," the deposited proceeds of the insurance policy. In these circumstances, the mere existence of such a fund cannot, by use of interpleader, be

<sup>14</sup> See Keeton, *op. cit. supra*, n. 10.

<sup>15</sup> The insurance problem envisioned at the time was that of an insurer faced with conflicting but mutually exclusive claims to a policy, rather than an insurer confronted with the problem of allocating a fund among various claimants whose independent claims may exceed the amount of the fund. S. Rep. No. 558, 74th Cong., 1st Sess., 2-3, 7, 8 (1935); Chafee, *Modernizing Interpleader*, 30 Yale L. J. 814, 818-819 (1921).

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employed to accomplish purposes that exceed the needs of orderly contest with respect to the fund.

There are situations, of a type not present here, where the effect of interpleader is to confine the total litigation to a single forum and proceeding. One such case is where a stakeholder, faced with rival claims to the fund itself, acknowledges—or denies—his liability to one or the other of the claimants.<sup>16</sup> In this situation, the fund itself is the target of the claimants. It marks the outer limits of the controversy. It is, therefore, reasonable and sensible that interpleader, in discharge of its office to protect the fund, should also protect the stakeholder from vexatious and multiple litigation. In this context, the suits sought to be enjoined are squarely within the language of 28 U. S. C. § 2361, which provides in part:

"In any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting *any proceeding* in any State or United States court *affecting the property, instrument or obligation involved in the interpleader action* . . ."

But the present case is another matter. Here, an accident has happened. Thirty-five passengers or their representatives have claims which they wish to press against a variety of defendants: the bus company, its driver, the owner of the truck, and the truck driver. The circumstance that one of the prospective defendants happens to have an insurance policy is a fortuitous event which should not of itself shape the nature of the ensuing litigation. For example, a resident of California, injured in California aboard a bus owned by a California corporation should not be forced to sue that corporation

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<sup>16</sup> This was the classic situation envisioned by the sponsors of interpleader. See n. 15, *supra*.



anywhere but in California simply because another prospective defendant carried an insurance policy. And an insurance company whose maximum interest in the case cannot exceed \$20,000 and who in fact asserts that in has no interest at all, should not be allowed to determine that dozens of tort plaintiffs must be compelled to press their claims—even those claims which are not against the insured and which in no event could be satisfied out of the meager insurance fund—in a single forum of the insurance company's choosing. There is nothing in the statutory scheme, and very little in the judicial and academic commentary upon that scheme, which requires that the tail be allowed to wag the dog in this fashion.

State Farm's interest in this case, which is the fulcrum of the interpleader procedure, is confined to its \$20,000 fund. That interest receives full vindication when the court restrains claimants from seeking to enforce against the insurance company any judgment obtained against its insured, except in the interpleader proceeding itself. To the extent that the District Court sought to control claimants' lawsuits against the insured and other alleged tortfeasors, it exceeded the powers granted to it by the statutory scheme.

We recognize, of course, that our view of interpleader means that it cannot be used to solve all the vexing problems of multiparty litigation arising out of a mass tort. But interpleader was never intended to perform such a function, to be an all-purpose "bill of peace."<sup>17</sup> Had

<sup>17</sup> There is not a word in the legislative history suggesting such a purpose. See S. Rep. No. 558, 74th Cong., 1st Sess. (1935). And Professor Chafee, upon whose work the Congress heavily depended, has written that little thought was given to the scope of the "second stage" of interpleader, to just what would be adjudicated by the interpleader court. See Chafee, *Broadening the Second Stage of Federal Interpleader*, 56 Harv. L. Rev. 929, 944-945 (1943). We note that in Professor Chafee's own study of the bill of peace as a device for dealing with the problem of multiparty litigation,

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it been so intended, careful provision would necessarily have been made to insure that a party with little or no interest in the outcome of a complex controversy should not strip truly interested parties of substantial rights—such as the right to choose the forum in which to establish their claims, subject to generally applicable rules of jurisdiction, venue, service of process, removal, and change of venue. None of the legislative and academic sponsors of a modern federal interpleader device viewed their accomplishment as a “bill of peace,” capable of sweeping dozens of lawsuits out of the various state and federal courts in which they were brought and into a single interpleader proceeding. And only in two reported instances has a federal interpleader court sought to control the underlying litigation against alleged tortfeasors as opposed to the allocation of a fund among successful tort plaintiffs. See *Commercial Union Ins. Co. of New York v. Adams*, 231 F. Supp. 860 (D. C. S. D. Ind. 1964) (where there was virtually no objection and where all of the basic tort suits would in any event have been prosecuted in the forum state), and *Pan American Fire & Cas. Co. v. Revere*, 188 F. Supp. 474 (D. C. E. D. La. 1960). Another district court, on the other hand, has recently held that it lacked statutory authority to enjoin suits against the alleged tortfeasor as opposed to proceedings against the fund itself. *Travelers Indem. Co. v. Greyhound Lines, Inc.*, 260 F. Supp. 530 (D. C. W. D. La. 1966).

he fails even to mention interpleader. See Chafee, *Some Problems of Equity* 149–198 (1950). In his writing on interpleader, Chafee assumed that the interpleader court would allocate the fund “among all the claimants who get judgment within a reasonable time . . .” Chafee, *The Federal Interpleader Act of 1936*: II, 45 *Yale L. J.* 1161, 1165–1166 (1936). See also Chafee, 49 *Yale L. J.*, at 420–421.

In light of the evidence that federal interpleader was not intended to serve the function of a "bill of peace" in the context of multiparty litigation arising out of a mass tort, of the anomalous power which such a construction of the statute would give the stakeholder, and of the thrust of the statute and the purpose it was intended to serve, we hold that the interpleader statute did not authorize the injunction entered in the present case. Upon remand, the injunction is to be modified consistently with this opinion.<sup>18</sup>

#### IV.

The judgment of the Court of Appeals is reversed, and the case is remanded to the United States District Court for proceedings consistent with this opinion.

*It is so ordered.*

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<sup>18</sup> We find it unnecessary to pass upon respondents' contention, raised in the courts below but not passed upon by the Court of Appeals, that interpleader should have been dismissed on the ground that the 11 Canadian claimants are "indispensable parties" who have not been properly served. The argument is that 28 U. S. C. § 2361 provides the exclusive mode of effecting service of process in statutory interpleader, and that § 2361—which authorizes a district court to "issue its process for all claimants" but subsequently refers to service of "such process" by marshals "for the respective districts where the claimants reside or may be found"—does not permit service of process beyond the Nation's borders. Since our decision will require basic reconsideration of the litigation by the parties as well as the lower courts, there appears neither need nor necessity, to determine this question at this time. We intimate no view as to the exclusivity of § 2361, whether it authorizes service of process in foreign lands, whether in light of the limitations we have imposed on the interpleader court's injunctive powers the Canadian claimants are in fact "indispensable parties" to the interpleader proceeding itself, or whether they render themselves amenable to service of process under § 2361 when they come into an American jurisdiction to establish their rights with respect either to the alleged tortfeasors or to the insurance fund. See 2 Moore, Fed. Prac. ¶ 4.20, at 1091-1105.

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# SUPREME COURT OF THE UNITED STATES

No. 391.—OCTOBER TERM, 1966.

State Farm Fire & Casualty Co. et al., Petitioners, v. Kathryn Tashire et al.	} On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
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[April 10, 1967.]

MR. JUSTICE DOUGLAS, dissenting in part.

While I agree with the Court's view as to "minimal diversity" and that the injunction, if granted, should run only against prosecution of suits against the insurer, I feel that the use which we today allow to be made of the federal interpleader statute,<sup>1</sup> 28 U. S. C. § 1335, is, with all deference, unwarranted. How these litigants are "claimants" to this fund in the statutory sense is indeed a mystery. If they are not "claimants" of the fund,<sup>2</sup> neither are they in the category of those who "are claiming" or who "may claim" to be entitled to it.

<sup>1</sup> "(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of \$500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of \$500 or more . . . if

"(1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if (2) the plaintiff has deposited such money or property . . . into the registry of the court, there to abide the judgment of the court . . ."

<sup>2</sup> Under the policy issued by petitioner, it promises "[t]o pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of (A) bodily injury sustained by other persons . . . caused by accident arising out of the ownership, maintenance or use, including loading or unloading, of the owned automobile. . . ." The insured will "become legally

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This insurance company's policy provides that it will "pay on behalf of the insured all sums which the insured shall become legally obligated to pay." To date the insured has not become "legally obligated" to pay any sum to any litigant. Since nothing is owed under the policy, I fail to see how any litigant can be a "claimant" as against the insurance company. If that is doubtful the doubt is resolved by two other conditions:

(1) The policy states "no action shall lie against the company . . . until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company."

(2) Under California law where the accident happened and under Oregon law where the insurance contract was made, a direct action against the insurer is not allowable until after a litigant receives a final judgment against the insured.<sup>3</sup>

Thus under this insurance policy as enforced in California and in Oregon a "claimant" against the insured can become a "claimant" against the insurer only after final judgment against the insured or after a consensual written agreement of the insurer, a litigant, and the insurer. Neither of those two events has so far happened.<sup>4</sup>

obligated to pay" only if he has been found to be at fault for the accident, or if the victim's claim has been settled in accord with the policy terms. The claim against the insurance company is thus contingent on a finding that the insured was at fault or a settlement. This is unlike the situation where the insurance company has issued a policy such as a workmens compensation policy which insures the insured for liability imposed in the absence of fault.

<sup>3</sup> See Calif. Ins. Code § 11580 (2); Ore. Rev. Stat. § 23.230.

<sup>4</sup> In those States having a direct action statute, allowing an action against the insurer prior to judgment against the insured, interpleader jurisdiction can be sustained absent a judgment against the insured. The direct action statute gives the injured party the status of a "claimant" against the insurer. See, e. g., *Pan American Fire & Cas. Co. v. Revere*, 188 F. Supp. 474, 482-483.

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This construction of the word "claimants" against the fund is borne out, as the Court of Appeals noted, by Rule 22 (1) of the Federal Rules of Civil Procedure.<sup>5</sup> That Rule, also based on diversity of citizenship, differs only in the district where the suit may be brought and in the reach of service of process, as the Court points out.<sup>6</sup> But it illuminates the nature of federal interpleader for it provides that only "persons having claims against the plaintiff (insurer) may be joined as defendants and required to interplead."

Can it be that we have two kinds of interpleader statutes as between which an insurance company can choose: one that permits "claimants" against the insurer ("persons having claims against the plaintiff") to be joined and the other that permits "claimants" against the insured to be joined for the benefit of the insurer even though they may never be "claimants" against the insurer? I cannot believe that Congress launched such an irrational scheme.

The Court rests heavily on the fact that the 1948 Act contains the phrase "may claim," while the 1926 and 1936 interpleader statutes contained the phrase "are claiming." From this change in language the Court infers that Congress intended to allow an insurance company to interplead even though a judgment has not been entered against the insured and there is no direct action statute. This inference is drawn despite the fact that the Reviser's Note contains no reference to the change in wording or its purpose; the omission is dismissed as "inadvertent." But it strains credulity to suggest

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<sup>5</sup> Rule 22 (1) provides in part:

"Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability."

<sup>6</sup> See note 3 of the Court's opinion.

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that mention would not have been made of such a drastic change, if in fact Congress intended to make it. And, despite the change in wording, under the 1948 Act, there must be "adverse claimants . . . [who] are claiming or may claim to be entitled to such money . . . , or to any one or more of the benefits arising by virtue of any . . . policy . . . ." Absent a direct action statute, the victims are not "claimants" against the insurer until their claims against the insured have been reduced to judgment. Understandably, the insurance company wants the best of two worlds. It does not want an action against it until judgment against its insured. But, at the same time, it wants the benefits of an interpleader statute. Congress could of course confer such a benefit. But it is not for this Court to grant dispensations from the effects of the statutory scheme which Congress has erected.

I would construe its words in the normal sense and affirm the Court of Appeals.